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Supreme Court, U.S.
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In The

Supreme Court of The United States

October Term, 2000

Saadat A. Siddiqui, ***Pro se, Petitioner***

v.

Northern Telecom Inc., ***Respondent***

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

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37PP

QUESTIONS PRESENTED

1. Whether direct evidence is required to establish a *prima facie* case of employment discrimination? What is the real test/criteria to decide which evidence is direct and which is not? Is direct evidence always stronger and/or more credible than indirect evidence?

2. Should the determination of a *prima facie* case be exclusively based on plaintiff's proffered facts or on a combined evaluation of both the plaintiff's facts and defendant's explanation for its actions? Whether the district court erred by considering the defense side in determining that the plaintiff has failed to make out a prima facie case?

3. An unsuspecting employee, who has been previously denied hiring before s/he determines that the employer's actions were discriminatory, brings an action of employment discrimination under Title VII. Whether it will be proper for the court to conclude that the employer is entitled to summary judgment as matter of law and it did not discriminate because it had refused employment to that employee before?

Under *McDonell Douglas* proof scheme, what is specifically required to show that the employer had knowledge of the employee's protected activities? Who should raise the knowledge question, employer or the court? Whether the court erred in raising the knowledge question, on its own initiative, and concluding that the employer had no knowledge of petitioner's protected activity that continued over a two-year period?

4. Actions speak louder than words. Whether like the offensive statements, reckless **actions** of an employer may establish its motive in employment discrimination cases?

5. Whether the district court erred in concluding that Petitioner failed to show the causal link between his protected activities and respondent's adverse actions as required under the *McDonell Douglas* scheme to make out a prima facie case of retaliation?

6. Whether it is proper to use a court's ruling on frivolous cases as precedence to dispose off good cases?

7. Whether it is proper for the court and for the defendant to first overly restrict the petitioner's discovery and then demand of the petitioner the evidence that would have been obtained if the discovery had been allowed?

8. Whether the court erred in partially dismissing petitioner's claims, on the grounds of an insignificant facial defect on the EEOC charge form, while discounting other factors that weigh heavily against such a dismissal?

9. Whether employer–employee communication, face-to- face and over the media used for conducting daily business, is hearsay? Whether the court has erred in treating a recorded recollection of such a communication as hearsay?

10. Whether the law allows an employer to fish for damaging information from its former employee's current employer in order to build a defense in a Title VII action brought by the grieved ex-employee? Whether in a deposition held without a judge, a deposed party may be ordered to disclose irrelevant information and answer all deposition questions without any objection else face serious consequences? Whether it is proper to issue an Order citing secondary reasons because the main reason of the motion is impermissible by law?

11. What level of misrepresentation, if any, is permissible in pleadings? Whether the court erred in

rebuking plaintiff instead of sanctioning the defendant and/or its counsel for its deliberate and repeated misrepresentations, brought to court's attention by the plaintiff?

12. Respondent's business is located is in Wake County and that is where 90% of prospect witnesses reside. Whether the district court erred in assigning the case to a location 100 miles away from the proper VENUE? Whether the court also erred in ruling on summary judgment motion prior to dealing with petitioner's objection on improper venue?

13. In our justice system and administrative regulations there is a statue of limitation or time-bar for every thing. An employee is usually time-barred from making claims or conduct discovery. Whether the employer has any time-bar at all as to what it can bring into the defense?

14. Whether the Court of Appeals for the Fourth Circuit erred in affirming the district court and not publishing its opinion?

Whether sufficient evidence exists that, in modern days, summary judgment is often applied aggressively and inconsistently in employment discrimination actions brought by individuals against their employers? Particularly when the employer is a major corporation and the individual is a minority without resources to bear the excessively high cost of litigation? And whether abolishing the unbalanced summary judgment process is warranted to reduce the case load of this Court and that of appellate courts, and to enhance the cause of justice as legislated by the Congress to protect **all** specially the most vulnerable members of our society?

LIST OF PARTIES

The parties to this action are:

1) Saadat A. Ssiddiqui, a resident of Phoenix, Arizona.

   Mr. Siddiqui is not a corporate entity. Accordingly Rule 29.6 is not applicable to this Petition.

2) NORTHERN TELECOM INC., located in RTP, North Carolina.

3) Frank Pelouze Ward Jr., Attorney for Respondent/Appellee/Defendant, NTI.

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1) Certiorari should be granted to answer all the questions raised and review this case for major deviations from the norm, inconsistencies, conflicts, and plain errors in granting the summary judgment in favor of defendant. 17

2) Certiorari should be granted to determine whether the district court's conclusion that Siddiqui failed to establish causal connection is inconsistent with court's other findings in the case and is inconsistent and in conflict with other courts in the nation. The district court has decided this case against the guide lines it set for itself and has presented very dangerous and irrational legal theories. Despite clear evidence of causal connection, Court has rejected that evidence by applying some questionable concepts in a questionable manner and performing a jury function. 20

3) Certiorari should be granted to determine whether the partial dismissal of Siddiqui's case under the given circumstance was a clear error and not in the interest of justice. 25

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PETITION FOR WRIT OF CERTIORARI

The petitioner Saadat A. Siddiqui respectfully petitions this Court for a writ of certiorari to review the judgments, orders, and opinions of the courts below, the United States Court of Appeals for the Fourth Circuit and the District Court of Eastern District of North Carolina, Western Division. This petition is accompanied by a separate Appendix volume.

OPINION BELOW

The court of appeals did not publish its opinion. A copy of its MANDATE, its Order denying rehearing and rehearing en banc, and its unpublished opinion are provided as Appendices A, B, and C respectively in the accompanying separate Appendix volume.

Ten out of the twenty-nine orders of the district court were set on appeal to Fourth Circuit court. A copy of each of these orders along with eight more are provided in Appendix D through Appendix T.

The district court's judgment is Appendix D. Its order granting summary judgment to defendant, mooting Siddiqui's motions to allow proper VENUE, and to extend time for providing the witness list is at Appendix E. The next Order at Appendix F denies Siddiqui's following motions, motion to compel discovery, motion to subpoena defendant's employees, motion to confirm jury trial, and the motion to reconsider the denied extension of discovery end date; but allows extension to respond to summary judgment because **defendant needed four months (115 days to be exact) beyond the reset schedule to respond to discovery**. Appendix G is the order denying reconsideration of partial dismissal under F.R.P. 60(b). Appendix H is the order denying reply to defendant's response to plaintiff's motion

to compel discovery. Appendix I is the order allowing defendant out of time filing of its responses to plaintiff's motions to subpoena defendant's employees and the motion for relief from partial dismissal under F.R.P. 60(b). Appendix J is the order allowing defendant out of time filing of its overdue Statement of Objections. Appendix K is the order denying Siddiqui's opposition to **allowing defendant repeatedly out of time filing for no good cause**. Appendix L is the order allowing defendant time to respond to Siddiqui's motion to compel, motions to subpoena, and motion for relief from partial dismissal. Appendix M is the order extending time for dispositive motions **on defendant's request**. Appendix N is the order allowing Siddiqui to amend a preceding motion, but denying reconsideration of prior order that set the end date for discovery. Appendix O is the order denying Siddiqui's first request to extend discovery end date. Appendix P is the order denying Siddiqui's request to reconsider partial dismissal order and mooting two motions – reject defendant's objections to extend discovery and allow submitting corrections to a memorandum. Appendix Q is the order allowing defendant extension to respond to plaintiff's motion to reconsider partial dismissal order. Appendix R is the Clerk's Order reprimanding Siddiqui for reading the word "file" in context of the word "mail" on the motion. Appendix S is the order allowing Siddiqui extension to request reconsideration of partial dismissal order. Appendix T is the order partially dismissing defendants all claims except retaliation.

JURISDICTION

The unpublished opinion of the Fourth Circuit court was entered on December 8, 1999. See Appendix C. The Fourth Circuit denied hearing and rehearing en banc on March 20,

2000. See Appendix B. The Jurisdiction in Fourth Circuit was under 28 U.S.C. § 1291.

On July 3, 2000, this Court extended the time to file Petition for a writ of certiorari to and including August 20, 2000. Under 28 U.S.C. § 1254, this Court has jurisdiction to review the decisions of the Fourth Circuit and the decisions of the district court that were appealed to Fourth Circuit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*.

An employer may not discriminate against an employee "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a).

Sec. 2000a. Prohibition against discrimination or segregation in places of public accommodation

- (a) Equal access

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

STATEMENT OF THE CASE

By an order dated May 11, 1998, the United States District Court of Eastern District of North Carolina, Western Division, dismissed plaintiff's ("petitioner", "Siddiqui") claims of race, sex, age, religion, and national origin discrimination for lack of subject matter jurisdiction. The court held that these claims were not included in the scope of petitioner's April 1996 EEOC charge. The remaining claim of retaliatory discrimination was left before the court for further disposition.

By order of May 20, 1999, the district court granted summary judgment in favor of defendant ("respondent", NTI), holding that "Siddiqui has failed to establish the *prima facie* case of discriminatory retaliation." However, the court concluded, "NTI did not like Siddiqui, did not trust him, told others not to hire him, and said he would never be hired at NTI."

Petitioner filed a timely appeal in the Court of Appeals for the Fourth Circuit. The court of appeals affirmed the summary judgment per curiam and did not publish any opinion. The court of appeals further denied Petitioner's timely filed motion for rehearing and rehearing en banc; again without any explanation.

FACTS

Because of the procedural history of the case, no published opinion by court of appeals, inadequate explanation in district court's orders, this petition needs to set forth some background necessary for understanding this case specially the non-discriminatory reasons proffered by NTI. Court's patience and kindness is respectfully requested and Siddiqui offers his gratitude in return.

The facts below will show the Court how **recklessly and continuously** over a long period NTI has discriminated against Siddiqui and the jury has not been called in as yet.

Respondent, Northern Telecom Inc., ("NTI", "BNR"[1], "appellee", or "defendant") is a global corporation in the telecommunication industry with annual revenue of over $12.85 billion US dollars and over 75,000 employees worldwide. Its largest presence in the US, employing about 8,000 people, is in Research Triangle Park (RTP), North Carolina.

In July 1984, NTI hired petitioner, Saadat Siddiqui, as a senior engineer to design and develop the software for its digital switching systems (DMS-10, DMS-100, etc.). Siddiqui was highly qualified for that line of work – with two Master degrees and 5 years of work experience at major telecommunication companies like ITT and Harris RF Communications Inc. Also between 1978 and 1980, Siddiqui taught undergraduate classes as an adjunct faculty member at F.I.T. Melbourne, Florida.

In 1985, along with his workgroup, Siddiqui was transferred to BNR (Bell Northern Research - NTI's research and development subsidiary). This transfer did not finalize until May 1986 due to obvious feud and tussles between NTI and the young BNR management of Canadian origin. Unfortunately, the older members of the transferred group paid the price of becoming BNR employee.

a) Layoff

In April 1989, Siddiqui was laid off with verbal and written assurances of being rehired[2] shortly. According to

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[1] BNR merged with NTI on December 31, 1997. So, NTI & BNR are used interchangeably.

[2] "Internal assistance will be provided through Career Development, your contact is John Dowd (Ext. 7209). External assistance will be

NTI, "this layoff was due to budget cuts and no layoff policy was followed because none existed then." However, one could not avoid noticing the impermissible discriminatory nature of the operation as the majority of those laid off were over 40. In Siddiqui's own group a much younger person with almost no experience was retained on board.

Siddiqui served BNR well and produced top quality software. Siddiqui left BNR in good standing on friendly terms with a reciprocal promise to serve it again in the future. In an exit letter, David Wilhelm, Siddiqui's last NTI manager wrote "Saadat Siddiqui worked for me from February 8, 1988, through March 24, 1989. During our association, I found him to be a loyal and conscientious employee." Also, plaintiff had a very positive exit interview with the NTI Director of Human Resources. The Court ordered NTI to provide copies of exit interviews. See Appendix F, p. 19. NTI declined misstating[3] deliberately "NTI affirmatively states that plaintiff did not have an exit interview in 1989." NTI's supplemental answer to interrogatory 7.

b) Employment Denied Before Filing EEOC Charges.

In 1991, Siddiqui started pursuing employment with NTI directly and/or through third party contractors. Because of his qualifications, experience, and being a perfect match for NTI jobs, Siddiqui was usually the first pick of almost all the consulting companies which were helping NTI to fill its wildly growing number of openings. Initially, nothing much happened. First, because NTI has just begun rebounding from its years of decline and second, Siddiqui was not after it completely. Shortly after, Siddiqui began an aggressive

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provided to you through Right Associates in Raleigh at 4601 Six Forks Road. Your contact at Right is Jay Stahl, 848-2285."

[3] NTI's pleading are replete with misstatements. A judicial notice is warranted.

effort. A brief description of a few of the numerous unsuccessful job attempts as on record is reproduced below to facilitate a deeper understanding of the case and how many times NTI **recklessly** discriminated against Siddiqui.

- ❖ In June 1993, at a Job Fair held in Marriott Hotel of Raleigh, NC, Siddiqui had very favorable interview with a new NTI manager of a new department. This job search ended in an unsuccessful phone chase to contact that manager.

- ❖ Also in June 1993, Siddiqui had a meeting with Mr. Abdul Khawar, NTI's Vice President and a Pakistani, who, stating the common national-origin, showed fear and shied away from entertaining the employment issue presented to him

- ❖ In June 1994, IIC's manager Sam Dees[4], a friend, compared Siddiqui's qualifications and experience against NTI's job openings and vowed to land him a job in no time. IIC presented papers to its NTI business contact and reported to Siddiqui that **embarrassing remarks** received have annulled any hopes for a job at NTI and, for that matter, at IIC. In a letter to IIC, Siddiqui suggested to open a communication channel to clear up the matter. It was not welcome and rejected with more despise. See Appendix vol., Appendix Y, p. 63.

- ❖ On August 3, 1994, against multiple open positions, NTI's manager Ms. Camino Andradi and her staff interviewed Siddiqui. She openly indicated her intentions to hire him either as a contractor or as a direct employee. Decision on this was postponed to allow another manager interview Siddiqui for a higher priority

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[4] Mr. Sam Dees used to be Siddiqui's collegue. He knew that Siddiqui was nominated for a Regional Peak Performance Award of Nynax Corp., for saving its subsidiary's business with IBM.

opening which is described in the next bullet.

❖ On August 9, 1994, against multiple open positions, NTI's manager Cathleen Cassady and her staff interviewed Siddiqui. She wanted to hire him on the spot, but could not because her manager was out of town. This job and the one before ended as described in the next bullet.

❖ On August 15, 1994, Siddiqui's new prospect employer CDI notified him that "NTI just called, an offer is in the works." A few hours later, it was cancelled and NTI had also volunteered lots of negative career destroying remarks ("Siddiqui is not re-hirable") and more.

❖ On October 20, 1994, against three open positions, Siddiqui had an unforgettable interview with NTI's manager Mike Sutton and his staff. He was not allowed to take Siddiqui to his office inside the building, so he held the interview in the main lobby for four hours. Despite this odd scene, Mike promised to make an offer and see about this bizarre situation while bidding farewell at the end of the interview. Siddiqui followed up, Mike avoided, and the whole thing ended in silence. Later, Siddiqui learnt that a white young female was hired.

NOTE: Before describing more jobs refused, it is appropriate to describe facts around the above humiliation and unlawful violation of Siddiqui's constitutional rights to Equal Access.
42 U.S.C. Sec. 2000a.

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c) NTI's Undisputed Scandalous Plot To Hide a Long History of Discrimination

Until it happened on Oct 20, 1994, Siddiqui could not imagine such a thing happening to him. Investigation into these drastic events revealed that a scandalous plot was conjured up on or before August 15, 1994, when NTI's Cathleen Cassady called CDI with intent to make an offer. This triggered some activity between NTI and Sam Dees (IIC). The next day, August 16, 1994, at 10:00 a.m., Siddiqui received a call from Mr. Dees accusing him of impersonating as IIC employee to get into BNR and threatening to file suit. He also mentioned BNR's security log as evidence for his accusations. The questions here are **who told Sam** that Siddiqui was being interviewed and who was involved in this plot?

Noting that Mr. Dees referred to BNR's security log as evidence, Siddiqui called BNR's security asking for a copy of the August 9 log sheet. See Appendix Z, p. 65. As Siddiqui was receiving the log sheet from security personnel, Roscoe Judd appeared from the interior of the building and snatched the paper from Siddiqui while questioning his presence. Siddiqui tried to calm the irrational Roscoe Judd but, when he found that impossible, he ended up grabbing his paper and exiting the building along with his nine-year-old daughter. Once again, the question is **who informed Roscoe** and who asked him to intercept Siddiqui in the lobby?

Siddiqui **complained** to NTI's facility manager, Mr. Wriggleworth, about Roscoe's harassing and unwarranted ugly behavior. Only to learn ten days later that he had been permanently "banned from entering any NTI building". This ban is enforced even today. Because of this ban Siddiqui has not gone to any NTI facility since that day, except twice; (1) to see Mr. Donovan, NTI's VP HR., and (2) to attend the GRAND OPEN HOUSE JOB FAIR at BNR in April 1996.

NTI has called its scandalous scheme, *Supra*, as Siddiqui's Unlawful Entry onto NTI premises and has since

madly used it in all its responses to EEOC inquiries, and in all its pleadings below as its non-discriminatory reason for adverse employment actions. According to records, EEOC's entire investigation was no more than one phone call to each party for each of the four charges and EEOC took one and a half year for one phone call. EEOC and the courts below concur with NTI. In view of the above undisputed facts, this concurrence warrants this Court's supervisory intervention to ensure "EQUAL JUSTICE FOR ALL".

d) First Two EEOC Charges Are Filed (Nov 22, & Dec 2, 1994)

After facing humiliation, harassment, unlawful deprivation of rights, continuous disparate treatment, defamation, blacklisting, *Supra*, the accompanying emotional stress and the economical hardship for two years, Siddiqui went to EEOC to file charges. According to the intake questionnaire on record, dated October 18, 1994, Siddiqui marked boxes for "race", "age", "sex", "religion", "national origin", and "other" discrimination. EEOC filed that charge against IIC (not NTI) for "age" discrimination only. Siddiqui had to struggle very hard to make EEOC file against NTI as is evident in Siddiqui's verbal arguments and letters exchanged with EEOC. On December 2, 1994 a charge against NTI was filed, at last. Again EEOC allowed only age, race, and national origin claims. These two EEOC charges cover all the jobs, *Supra*, and more[5] that fell within the 180-day time-bar to file. EEOC **dismissed** the two charges on **March 25, and April 9, 1996**; just 15 days apart.

e) Employment Denied After The First Two EEOC Charges

❖ December 4, 1994, three categories of multi-openings advertised in News & Observer, Raleigh, N.C. Three

[5] A detailed list of all jobs will be filed with the BRIEF.

resumes mailed, one for each category including the ENTRY-level positions. NTI did not even send the automated courtesy acknowledgment. NTI filled these positions.

❖ April 17, 1995, Southeast High Tech Career Job Fair. At NTI's stall, Siddiqui gave his resume to and discussed multiple relevant job openings with Ron Tsang, oriental, who worked with Siddiqui at BNR. Ron never returned any calls regarding the (estimated) 15 relevant openings at Richardson Texas, most of which Siddiqui qualified for. Also, NTI never replied Siddiqui's follow-up letter mailed on October 10, 1995. NTI filled these positions.

❖ July 28, 95, a consulting company named CTG interviewed Siddiqui and submitted his papers to NTI for contract jobs. Mr. Walt Kennedy, sales manager; and Mr. Jim Powell, resource manager, practically offered the job verbally and submitted papers to NTI.

❖ September 27, 1995, Monarch submitted Siddiqui's papers against two contract positions at NTI requiring minimum five years experience in DMS family of switches. NTI filled these positions.

❖ October 4, 1995, Dan Smith of Kelly Services submitted Siddiqui's papers to NTI against multiple contract positions.

f) The Third EEOC Charge is Filed (October 31, 1995) (First two charges still pending)

The above unlawful refusals to hire compelled Siddiqui to file the third charge on October 31, 1995. After listening to Siddiqui's story for all the above jobs, EEOC's charge intaker chose to charge NTI for "retaliation" only.

On the Charge Questioner form, Siddiqui wrote "**retaliation**", "**age**", "**national origin**", and implied "**religion**", "**sex**" in a subsequent statement. Siddiqui had a long argument with EEOC about including these claims. On November 7, 1995 Siddiqui's **file** was transferred from Raleigh, NC to Charlotte, NC. Ron Tsang of NTI was identified as witness. Records received from EEOC do not show that EEOC contacted him in any way. This charge was **dismissed** on **May 13, 1996**, just one month after the second charge.

g) Employment Denied After The Third EEOC Charge

❖ On December 12, 1995, Dataskills & Siddiqui signed a binding employment contract. Dataskills referred Siddiqui to Northern Telecom. On January 5, 1996, NTI told Dataskills that Siddiqui "is not eligible for rehire." Dataskills withdrew contract and blacklisted Siddiqui permanently.

❖ On January 5, 1996, NTI gave a highly negative reference to Cutler Williams who liked Siddiqui and wanted to offer. The negative job reference was so strong that the company blacklisted Siddiqui for all its jobs.

❖ On January 31, 1996, NTI again gave very strong bad references to another employer COMSYS who was desperate for Siddiqui but ended up blacklisting him.

❖ On March 18, 1996, Siddiqui directly applied with NTI for two positions advertised in the N&O dated March 17, 1996.

❖ In March 1996, Siddiqui had a meeting with Mr. Bill Donovan, NTI's Human Resource Vice President. Discussion included, Siddiqui's excellent credentials, his

superb performance at last employer , Dataskills contract cancellation and NTI's current job openings. A couple of times, Mr. Donovan stepped out of the meeting and returned using a different tone. His behavior ranged from very nice to very ugly. From his statements and demeanor one could notice that he had full knowledge of all EEOC charges, alleged unlawful entry, and an entire history of Siddiqui's employment, as one should expect of a good HR VP. As a follow up, Siddiqui wrote and called him. Finally, Mr. Donovan called to inform, "a meeting consisting of himself, Mr. Khawar, and other mangers has decided to **never offer you a job**." For the first time NTI has told Siddiqui its stance on employing him. Mr. Donovan refused to give a transcript of this decision. (Note: This meeting was made possible by the good offices of Mr. Chandran, the new NTI president and an Indian. His arrival had shaken NTI, RTP, with new marching orders to lead the industry.)

h) Fourth EEOC Charge is Filed (April 2, 1996) (Last two charges still pending)

On March 12, 1996, Siddiqui had partly filled his intake questionnaire when an EEOC's charge intaker became ready to talk. So intake questionnaire was not filled completely. Ultimately a charge of "retaliation" was filed on April 12, 1996. On this charge EEOC also marked the "CONTINUING ACTION" box explaining that this connects the current charge to all the previous actions as those are under investigation simultaneously. Also it avoids claiming charges repetitively and eliminates the need. In good faith, Siddiqui believed this logical explanation without any doubt that is why Siddiqui did not write to EEOC to add other claims. Moreover, Siddiqui was just plain tired of dealing with EEOC. However, a form labeled, Resume of Inquiry, completed by EEOC counselor KAR on Feb 23, 96, states "PCP believes he was denied hire because of his **age** and possible **retaliation** for having filed several

charges against Northern Telecom." The letter also shows date of incident as Jan 5, 1996, the date at which **NTI has admitted to giving bad reference to Dataskills and other companies.**

I) Jobs Denied After the Fourth EEOC Charge

❖ April 14, 1996, Siddiqui attended NTI's Grand Open House Job Fair held in BNR building, RTP, NC. Siddiqui worked in this building but is now banned from ever stepping on its grounds. NTI had hundreds of openings; Siddiqui qualified for most of them. He signed in, passed on his resume, and spoke with some managers who showed a lot of interest in him. In vain, Siddiqui followed up with those managers as they used avoiding techniques. Many managers like Camino Andradi, Cathleen Cassady, Asif Khan, and some others who knew Siddiqui did their best to avoid eye contact. Siddiqui respected that.

❖ In an interrogatory about its hiring policy, NTI states "[Candidate's] resume is maintained for active consideration for 180 days." Therefore all qualified open positions up to October 15, 1996 are justifiably regarded as denied.

❖ Technically and logically, even NTI's current job openings are also jobs denied because of Siddiqui's lawful interest in them, while NTI's unlawful ban on access to its facilities and its blacklisting decisions make it **futile** to apply for them.

> NOTE: This petition has not listed all the jobs denied. Others include NTI's online announcements, word-of-mouth - internal and external referrals, jobs at NTI's competitors like Alcatel, Fujuitsu, Tekelec, SAS, consulting company's jobs, and the

government jobs that Siddiqui lost as a direct result of NTI's giving out bad references.

I) Dismissal of the Fourth EEOC Charge (Jan 21, 1997)

A few days before dismissing this charge, EEOC presented NTI's offer of a favorable recommendation letter to withdraw the charge. Siddiqui declined and asked to reconsider this offer in the light of enormous irreparable loss NTI has caused him for no reason. NTI did not respond and EEOC dismissed the charge on Jan 21, 1997.

In its dismissal letter EEOC writes:

> "The evidence obtained by the commission indicates that Respondent did not give out bad references on you, as alleged. The evidence reveals that you were a former employee who voluntarily left the company with a grant of severance pay when your performance was rated at a sub-standard level. Subsequently, Respondent became aware that you used dishonest methods to gain entry to its premises; **thereafter, you were deemed to be unsuitable for rehire.** The evidence fails to show there was a violation of Title VII or that retaliation occurred."……
>
> ……
>
> S/ Priscilla Stevens, Investigator.

Basically, similar text is reiterated in all dismissal letters. Interestingly enough, EEOC is exonerating NTI from giving out bad references while **NTI admits** it did so multiple times. Like NTI, EEOC also describes the performance ratings in its own invented terms, such as sub-standard - not even an option on the evaluation form - to make it look questionable. According to the record

Siddiqui's last two ratings were "**satisfactory contributor,**" (range 3+ to 3-) as shown below.

Siddiqui's Performance – September 9, 1988
s/ David Wilhelm:

"The next 4 months performance on DTC Performance Characterization was good. The Test Plan and Participation was satisfactory. The Analysis and Report was excellent.
He has increased communication with manager to a better level."

Performance summary statement						
5 ☐	4 ☐	3+ ☐	3 ✕	3- ☐	2 ☐	1 ☐

Siddiqui's Performance – December 23, 1988
s/ David Wilhelm

Superior contributor		Satisfactory contributor			Insufficent contributor	
5 ☐	4 ☐	3+ ☐	3 ☐	3- ✕	2 ☐	1 ☐

Also record shows that the "insufficient contributor" rating of 1987, NTI's proffered reason for denying employment in 1996 was actually "satisfactory contributor." After Siddiqui objected to it as low and unfair rating, it was further lowered to 2, "Insufficient contributor."

These subjective **evaluation** by young, inexperienced and biased **management** does in no way reflects Siddiqui true skills and capabilities. Siddiqui has much better record of performance before joining BNR and after leaving BNR. Moreover, the other undeniable fact is that like woman who

are paid 75% of what men are paid, the non-preferred minorities are rated at 75% or less of their actual performance.

Also, EEOC clarifies that Siddiqui became "ineligible for rehire" after what NTI calls "Unlawful Entry", otherwise Siddiqui was "eligible for rehire." This corroborates with Kristen Shamblins' (BNR HR) August 18, 1994 personnel phone report "Siddiqui is eligible for rehire."

REASONS FOR GRANTING THE CERTIORARI

1) **Certiorari should be granted to answer all the questions raised and review this case for major deviations from the norm, inconsistencies, conflicts, and plain errors in granting the summary judgment in favor of defendant.**

Since the court of appeals affirmed the decision without providing even a single sentence of explanation, Siddiqui assumes that its position in every respect is identical to that of the district court. Hence, in this petition and arguments, district court is used to mean both the district court and the court of appeals.

Summary judgment should not be granted if disputed issues of material facts exist. As in Anderson v. Liberty Lobby, Inc., 477 U.S. 242,247 (1986), " Only disputes between parties over facts that might affect the outcome of the case properly preclude the entry of summary judgment."

At worst, in this case NTI and Siddiqui have a non compromising dispute on two issues - performance and the unlawful entry, raised by NTI. Each of these issues will impact the outcome of the case. Therefore, summary

judgment is improper, and the case should be tried in front of a jury.

On the other hand, plaintiff has provided sufficient direct evidence to reverse the summary judgment with severe sanctions for fraudulent defense. This evidence at least includes the following:

Direct Evidence Sufficient to reverse summary judgment

Performance Issue:

i) According to the undisputed records referred under FACT, *Supra*, Siddiqui's performance was good when he was laid off. In fact he was promised to be called for re-employment.

ii) The performance rating in question is very subjective thing and it should be treated accordingly.

iii) NTI did not conduct the requested inquiry into the 1987 rating which was lowered from 3- to 2 when Siddiqui did not consider 3- as fair evaluation of his work.

iv) Siddiqui has a super performance record in his professional life before and after BNR/NTI.

v) NTI's issue with performance has no merit. In fact it is frivolous defense which should be rejected and sanctioned like any frivolous claim would be.

Now on to the second issue that NTI has heavily counted on as a sure wining strategy.

Unlawful Entry Issue:

Siddiqui asked NTI if he has ever done any thing unethical and NTI has any record of it. Given below is the actual request for production and NTI's answer.

Request 8:

"Any document that has any true record of any wrong and unethical act on part of the plaintiff."

Answer:

> "NTI objects to this Request on the grounds that it is overly broad, burdensome, vague, irrelevant, and seeks information that is privileged. NTI further objects to this Request to the extent that it seeks information pertaining to employees other than those in the Research Triangle Park, North Carolina, facility, where plaintiff worked during the times relevant to this lawsuit. Without waiving the foregoing objections and the general objection set forth above and incorporated herein by reference, **NTI states that there are no such documents.** (emphasis added)"

First, NTI's objection is worth noting. This is how NTI answered the entire discovery. NTI has no record of any wrong doing ever by Siddiqui, but it has filled pages and pages of pleadings to prove that Siddiqui committed unethical, and to be precise, criminal acts that rendered him permanently unfit for employment with NTI. To accomplish this, NTI has tried hiding behind Sam Dees or behind good faith beliefs. NTI cannot hide behind anything because it has deliberately taken that position in the three EEOC charges despite Siddiqui's continuous showing of evidence disproving that position.

The second direct evidence that no unlawful entry ever occurred is the copy of August 9, 1994 page from BNR's visitor log. See Appendix Z. This shows that on that day Siddiqui was invited by Cathleen Cassady for interview set by CDI and that NTI's accusation is nothing but **fraud.**

The district court has seen all of the above evidence.

NTI's entire defense is only the above two issues. In view of what is presented so far, **NTI has absolutely no defense**. No jury in the world will concur with NTI or the district court. Siddiqui could not find another example in employment case law where summary judgment is granted on purely fraudulent defense. **Hence, district court's position in this case is unique and it warrants this court's thorough review and actions to prevent this from happening again to another victim of discrimination.**

Now the question for this court is to determine how this direct evidence was ignored both by the district court and by court of appeals on review?

2) Certiorari should be granted to determine whether the district court's conclusion that Siddiqui failed to establish causal connection is inconsistent with court's other findings in the case and is inconsistent and in conflict with other courts in the nation. The district court has decided this case against the guide lines it set for itself and has presented very dangerous and irrational legal theories. Despite clear evidence of causal connection, Court has rejected that evidence by applying some questionable concepts in a questionable manner and performing a jury function.

The district court applied the proof scheme of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). See court's order at Appendix E. Also, the court cited *Tinsley v. First Union National Bank*, 155 F.3 435, 442 (4th Cir. 1998) as an example of application of *McDonnell Douglas* to prove *prima facie case* of retaliation.

According to *Tinsley*, "Normally, very little evidence of a causal connection is required to establish a *prima facie*

case." *First Union national Bank*, 155 F.3 435, 442 (4th Cir. 1998) (citing *Karpel v. Inova Health System Services*, 134 F.3d 1222 (4th Cir. 1998)). See e.g., *McNairn v. Sullivan*, 929 F.2d 974, 980 (4th Cir. 1991)**(Plaintiff stated prima facie case even though there was no evidence of causal connection other than the fact that plaintiff was fired after bringing a lawsuit)**. *Karpel*. (emphasis added). The court of appeals has held that "merely the closeness in time between filing of a discrimination charge and an employer's firing an employee is sufficient to make a prima facie case of causality." *See William v. Cerberonics, Inc.*, 871 F.2d 452, 457 (4th Cir. 1989).

To reject Siddiqui's prima facie, Court relies on a highly distinguishable case, *Dowe v. Total Action Against Poverty In Roanoke Valley*, 145 F.3d 653 (4th Cir, 1989). The court's decision in that case is sound but it cannot be applied on every retaliation case. The court has erred in applying Dowe on the instant case. In fact this is an example where a precedence set in frivolous cases or appeals becomes a major headache for *pro se* plaintiffs as the corporate lawyers abuse it and the Courts go along with them.

Dowe is very different from Siddiqui. On appeal, *Dowe* conceded that her initial charge of race discrimination was without merit. In *Dowe*, one adverse action of termination occurred three years after EEOC dismissed the case. In *Siddiqui*, adverse actions of denying employment occurred when three EEOC charges were under investigation. In *Dowe* only one adverse action was claimed. In Siddiqui, repeated and countless actions occurred and all of them are undisputed. In *Dowe*, employment continued for the next three years past the protected activity. In *Siddiqui*, employment was refused despite promises to rehire. In *Dowe*, employer offered lots of accommodations to keep the employee. In *Siddiqui*, employer created a trap to finish the employee. Dowe has a very questionable record. Siddiqui is

frequently recognized for his skills to tame difficult tasks. *Siddiqui's* employer has lied. *Dowe's* employer has been very people sensitive. *Dowe* has admitted that she was not retaliated against. To a fair jury, Siddiqui can prove that his is a case of continuous discrimination, disparate treatment and retaliation. *Dowe* has conceded that her supervisor did not know. *Siddiqui's* employer has not stated that it did not know, and it cannot for fear of perjury if the trial is held. That is the motive to avoid trial at all cost. *Dowe's* employer conducted many inquiries before taking any adverse action. Siddiqui's employer has refused inquiry and refused to give in writing what it did not and does not hesitate passing out verbally.

Also the district court has misquoted *Dowe* that "a plaintiff who alleges retaliation establishes that the prospective employer had the knowledge of the protected activity." *Dowe* only identifies the need to establish that the employer had the knowledge. Because it can be established in many ways, *Dowe* does not put that responsibility explicitly on the plaintiff as the district court has applied in the instant case. *Dowe's* language is copied here for comparison.

> "To satisfy the third element [causal connection] the employer must have taken the adverse employment action because the plaintiff engaged in a protected activity. Since, by definition, an employer cannot take action because of a factor of which it is unaware, the employers knowledge that the plaintiff engaged in a protected activity is absolutely necessary to establish the third element of a prima facie case.

Siddiqui agrees that an innocent employer must not be punished for running its business fairly and squarely. If NTI was innocent, Siddiqui would not have brought this action.

In the instant case NTI has never stated plainly that it did not know of Siddiqui's protected activity. So it is established that NTI knew and the Plaintiff need not reestablish that. When Siddiqui pointed that out on appeal, NTI repeated its rhetoric, but again avoided stating clearly whether it had the knowledge or not. Instead NTI tried to hide behind court's finding which is based on its rhetoric. NTI also refers to its Answer at Second Defense, Sixth Defense, sec, 8-12. None of these states that NTI did not know of Siddiqui's protected activity when it took adverse actions against him months after months and years after years. NTI's Answer has nothing about the knowledge question and can not be abused to prove what is never stated. Otherwise, no pleadings other than the complaint and answer be required in an action.

From the facts presented in this petition, a fact-finder can see that NTI cannot deny what it knew fully. If it did and the trial is held, it runs the risk of perjury. Although, NTI has already taken that risk once, in its scandalous plot to accuse Siddiqui of unlawful entry. In its pleadings, NTI has argued that EEOC charge or exhausting administrative remedies triggers lot of interaction between the employer and the employee. This should also create a lot of activity within the company and hence many key people in the company have to know, otherwise a single angel can not resolve such a dispute.

No jury can believe that a VP of human resources is not informed of EEOC charges pending against its company. And company has one angel who hides all these problems from rest of the company. Before believing this one would have to believe in the tooth fairy.

District court has also seriously erred in stating that Siddiqui alleges only one event that was discriminatory. The facts, *Supra* prove that. NTI itself has admitted two more events of giving out bad references and the court has reviewed that. The only difference between Dataskills and

all others is one paper - the written contract. Because of that proof Dataskills event is the only one that the district court has considered and not the others, even though sufficient circumstantial evidence exists to include all the events from October 2 ,1995 that are covered under the last charge filed, on April 2 1996. And that is lots of events and jobs.

By conducting the entire hiring on phone and leaving no written evidence in employees hand, employers have found a way to break the anti-discrimination laws safely and freely. The question therefore for this Court is what can be done to protect the victims when they are rendered totally helpless and their interests are not protected by any law.

The District court seems to not regard the Dataskills contract as admissible evidence, which is more than sufficient for prima facie.

In rejecting Siddiqui's prima facie, District court has considered the employment denials prior to EEOC filing as the employers license to discriminate freely. If this kind of precedence is set , then employer can only be sued for first violation. If that is missed, the employer is home free from then on. To avoid litigation, Siddiqui, showed lots of patience and tolerance. In a civilized society that must be appreciated, not punished.

From the time line of facts, S*upra*, it is evident the Dataskills, Cutler Williams, retaliations occurred only 65 days after the third EEOC charge and the COMSYS retaliation occurred 90 days after the EEOC filing. District court seems to imply that these events are not linked in time with the protected active because the time elapsed is more than 45 days. This theory provides the employer with the easiest way to frustrate all the anti-retaliation laws simply by waiting 45 days before taking an adverse action. After that employer is home free to violate any anti-discrimination law.

District court also points out that Siddiqui forecasts no evidence from deposition or affidavit to support his factual contentions. It absolutely does not lead to the conclusion drawn there is not enough evidence to survive summary judgment. All the evidence was in NTI control and the district court concurred with NTI that nothing is at all discoverable. Siddiqui does not know that under such circumstances he could get any further with deposition. Siddiqui believes the burden proof should lie on the party where it is easy to find the evidence.

This being the very first encounter of Siddiqui with any law, Siddiqui could not manage the case like a professional. Still Siddiqui kept pace with most of the things but fell short in conducting deposition for the following reasons.

1) First taking depositions was totally beyond Siddiqui's means.

2) Considering all factors, conducting the deposition would have been **futile.**

3) The only chance to get any facts out is during the trail. When Siddiqui could have some control to get the facts out.

4) Although, Siddiqui obtained Subpoenas with an intension to depose and or get a written deposition. But despite the best intention Siddiqui just could not handle the work load created by this case and his ignorance with the law.

3) Certiorari should be granted to determine whether the partial dismissal of Siddiqui's case under the given circumstance was a clear error and not in the interest of justice.

The district court dismissed siddiqui's claim of sex, age, race, religion, and national origin on the grounds that

corresponding boxes were not marked on the EEOC charge form under which this action is filed. See Appendix T. In court's view if the boxes are not marked, the administrative remedies are not exhausted and there is no exception to this rule or considerations that may waive this requirement. In the instant case, Court has taken such a rigid position that even if a record of EEOC investigations is produced for a cause that is not marked, the court will still dismiss that claim. Such an extreme application is completely against the purpose and intent of this Administrative requirement.

Siddiqui has no dispute with the covenants "that the scope of a plaintiff's complaint is defined and limited by the allegations contained in his EEOC charges. *Evans v. Technologies Applications & Serve. Co.*, 80 F.3d 954, 926-63 (4th Cir. 1996); *King v. Seaboard Coastline R.R. Co.*, 538 F2d 581, 583 (4th cir. 1976); *Alphonse v. Northern telecom, Inc.*, 776 F. Supp. 1075, 1080 (E.D.N.C. 1991). "This rule serves the dual purpose of affording the EEOC and the employer an opportunity to settle the dispute through conference, conciliation, and persuasion, and of giving the employer[r] some warning of the conduct about which the employee is grieved." *Cheek v. Eastern and Southern life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994)(citation omitted). "[A]llowing a complaint to encompass allegations outside the ambit of the predicate EEOC charge would frustrate the EEOC's investigatory and conciliatory role, as well as deprive the charged party of notice of the charged."*Id.* Only those discriminations claims stated in the initial charge, those reasonably related to the original complaint, and those developed by reasonable investigation of the original complaint may be maintained in a law suit." *Evans.* "[T]he scope of the charge rule requires that any claim alleged in a civil complaint be reasonably expected to follow from the EEOC charge." *Alphonse*, 776 F Supp. At 1080 (emphasis added).

If Siddiqui's EEOC three charges satisfy the above requirements than neither NTI nor Court should have any objection to allow them by reversing the wrongly dismissed claims.

The charge of December 2, 1994, alleged age, race, and national-origin claims. It served all the above requirements. While this was pending, another charge alleging retaliation on the charge form but showing intent to claim age, retaliation, religion and sex on the application was filed on October 31, 1995. Like the earlier charge served all the above requirements contemporaneously. Then the last charge claiming retaliation and **continued action** marked on the form and EEOC's telephonic inquiry indicating intent to claim age and retaliation was filed on April 2, 1996. Like the previous two charges, it also served all the requirements contemporaneously. Now the three charges are pending. NTI had all papers it needed to do its part that is try to settle the dispute. Did NTI do that? The answer is obvious "NO". Why so? NTI knows. Most probably, rather decisively, because Siddiqui was no body to NTI. He was just a foreign born non- preferred citizen. The question is did NTI treat other white plaintiff's the same? Again the answer is "NO". According to an answer to a discovery NTI settled claims with them out of court.

The fact that charges were scattered on three EEOC forms and arrived separately a short period apart does not reverse the requirement these three have already fulfilled.

These charges were dismissed on April 9, 1996, May 13, 1996, and January 21, 1997. It would have been impossible for Siddiqui to file and prosecute three different cases simultaneously. Ultimately these cases would have been merged into one case. This shows that it is only fair to allow Siddiqui all his claims.

Other factors that need to be consider include evidence of EEOC's control and errors, a continuous chain of adverse employment actions over a long period against a

single person, Siddiqui's intent to include all claim, and the case law precedences.

Two cases which can be called really identical to the plaintiff's case not only facially but in most of the facts, circumstances and law, are: *ANGOTTI v. KENYON & KENYON*, 929 F. Supp . 651 (S.D.N.Y. 1996) and *SOSA v. HIRAOKA*, 920 F.2d 1451 (9th Cir. 1990).

Angotti, an attorney herself, brought legal action of discrimination based on sex, disability and retaliation under Title VII. The defendant ,Kenyon & Kenyon moved to dismiss the plaintiff's charge of retaliation because of failure to exhaust administrative remedies. The plaintiff alleged that retaliation was not included on the charge because of wrong information given by the EEOC interviewer. The court denied defendant's motion.

Sosa, a community college professor, filed a charge of national origin discrimination with EEOC. Later he filed the legal action including defendant's discriminatory conducts that occurred much more than 180 days prior to filing with EEOC and also included other charges about acts of discrimination occurring after the EEOC has issued its letter of determination of charges. The United States District Court for the Eastern District of California, 714 F.Supp. 1100, Robert E Coyle, granted the defendant's motion to dismiss. Plaintiff appealed and the Court of Appeals, Tang , Circuit Judge, held that: " professor sufficiently alleged CONTINUING VIOLATION such that actions would not be dismissed as time barred"; and reversed the dismissal.

CONCLUSION

Most Courts are guided by the principle that summary judgment should **seldom** be granted in employment discrimination cases since the claims frequently rely on inferences. See R*eeding* v. *Arthur J. Gallagher and Co.*, 164 F.3d 1151, 1156 (8th Cir. 1999) (citing *Lynn v. eaconess Med.* Ctr.-West Campus, 160 F.3d 484, 486-87 (8th Cir. 1998)).

The courts decision and its findings are very inconsistent and suggest a serious error. The court states that it can *conclude* that NTI *did* not like Siddiqui, did not trust him, told others no to hire him and said he would never be hired at NTI. But the Court can not conclude that he has established a disputed issue of material factthat anyone at NTI discriminated against him because of EEOC charges he had previously filed

Whenever Siddiqui reads this order and observe the omissions, and the legal ideas introduced, he feels chilled. In this case more is at stake than just Siddiqui's personal interest in it. If it was just Siddiqi's interest, he would not come that far and put himself and his daughter life through such a torturous path of seeking justice. Siddiqui has very little capabilities to do justice with this case. In many ways this case has all the elements of Texaco, the Tobacco settlement but minus the crowd that creates the excitement and minus the lawyers who roar on court floor.

Whatever could go wrong in a case is very wrong in this case. From beginning to end it is full off flaws, inconsistencies, conflicts, unequal treatment in the court, unbalanced application law. This case provides the Court a better opportunity than *Reeves v. Sanderson Plumbing products, Inc.* to fix what is very wrong with the system. .

For all the important questions of law that directly affect the lives of millions, the foregoing facts, and for not so wellorchestrated arguments, the petition for writ of certiorari be granted

Repectfully Submitted.

Saadat A. Siddiqui
Pro se Petitioner,
8135 N. 35th Ave, Apt # 1109
Phoenix, AZ 85051.
Ph: (602) 589-5741

Date: August 20, 2000

(2)

Supreme Court, U.S.
FILED

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No
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APPENDIX

In The

Supreme Court of The United States

October Term, 2000

Saadat A. Siddiqui, ***Pro se, Petitioner***

v.

Northern Telecom Inc., ***Respondent***

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-1827
CA-97-260-5-H2

SAADAT A. SIDDIQUI

Plaintiff - Appellant

v.

NORTHERN TELECOM INCORPORATED

Defendant - Appellee

MANDATE
(Filed March 28, 2000)

The judgment of this Court dated 12/8/99 takes effect today.

s/ (typed signature)
PATRICIA S. CONNER
CLERK

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-1827
CA-97-260-5-H2

SAADAT A. SIDDIQUI

Plaintiff - Appellant

v.

NORTHERN TELECOM INCORPORATED

Defendant - Appellee

On Petition for Rehearing and Rehearing En Banc
(Order issued on March 20, 2000)

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied.

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

s/

Patricia S. Connor

CLERK

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 99-1827
CA-97-260-5-H2

SAADAT A. SIDDIQUI

Plaintiff - Appellant

v.

NORTHERN TELECOM INCORPORATED

Defendant - Appellee

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcom J. Howard, District Judge.

Submitted: November 16, 1999
Decided: December 8, 1999.

Before NIEMEYER and MICHAEL, Circuit Judges, and Hamilton, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Saadat A. Siddiqui,
Appellant Pro Se

Frank Pelouze Ward, Jr.,
MAUPIN, TAYLOR & ELLIS, P.A.,
Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Saadat Siddiqui appeals the district court's order denying his claims of employment discrimination and retaliation filed pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e - 2000e-17 (West 1994 & Supp. 1999). We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Siddiqui v. Northern Telecom, Inc., No, CA-97-260-5-H2 (E.D.N.C. May 20, 1999). We deny Siddiqui's motion to reconsider our order granting the Appellee an extension of time to file its informal brief. Further we deny Siddiqui's motion to reconsider our order denying his motion to reject the appellee's informal brief. Siddiqui's motion for an extension of time to file a reply after our action on these motions is likewise denied. Finally, we deny Siddiqui's motion to submit all motions to the panel for immediate ruling; his motions have been submitted to the panel in accordance with the court's standard case processing procedures. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and the argument would not aid the decisional process.

AFFIRMED

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

SAADAT A. SIDDIQUI

Plaintiff

v.

NORTHERN TELECOM, INC.,

Defendant.

JUDGMENT IN A CIVIL ACTION

Case No.: 5:97-CV-260- H2

(Filed May 20, 1999)

_____ **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ **Decision By Court**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED defendant's motion for summary judgment is granted, therefore the plaintiff shall have and recover nothing of the defendant and this case is closed.

SO ORDERED - s/Malcom J. Howard,
United States District Judge.

This judgment filed and entered on May 20, 99 and copies mailed to:

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Frank P. Ward, Jr.
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PO BOX 19764
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SEALED and
CLERK CERTIFIED

s/ Lisa W. Lee
Deputy Clerk

May 20, 1999

DAVID W. DANIEL
Clerk

s/ Lisa W. Lee
(By) Deputy Clerk.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant.

(Filed May 20, 1999)

This matter is before the court on defendant Northern Telecom's[1] ("NTI") motions for summary judgment and to strike plaintiff's suggestion of subsequently decided authority and evidence and on plaintiff's motions for enlargement of time and to move the location of the trial from Greenville, North Carolina, to Raleigh, North Carolina. Plaintiff has responded to defendant's motions, and this matter is ripe for adjudication.

STATEMENT OF THE CASE

Plaintiff, Saadat A. Siddiqui ("Siddiqui" or "plaintiff") was employed by NTI as a senior engineer from

---

[1] Siddiqui was an employee of BNR Inc., an affiliate of NTI. BNR merged with NTI on December 31, 1997. The two companies will collectively be referred to as "NTI" throughout this order.

July 30, 1984, until April 20, 1989, when NTI laid off Siddiqui and eliminated his position. Siddiqui, who is proceeding pro se, alleges that NTI refused to rehire and "blacklisted" him at other companies, thereby preventing him from obtaining employment. Siddiqui contends NTI discriminated against him because he is a forty-eight-year-old Asian Indian who has filed four charges with the Equal Employment Opportunity commission ("EEOC") complaining of NTI's actions.[1] Siddiqui charges that NTI's actions violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

Following his layoff, Siddiqui sought re-employment with NTI by applying directly to NTI and by applying through third-party contractors. His attempts were unsuccessful and resulted in Siddiqui's filing of his first three charges. Siddiqui filed his first charge (number 141950122) with the EEOC on November 22, 1994, alleging age discrimination. He filed his second EEOC charge (number 141950147) on December 2, 1994 again alleging age discrimination. He filed his third EEOC charge (number 141960054) on October 31, 1995, alleging retaliation for his December 2, 1994, charge. The EEOC dismissed each of Siddiqui's first three claims and issued him a right-to-sue letter, but Siddiqui failed to file suit on any of these claims.

On April 2, 1996, Siddiqui filed his final EEOC charge alleging retaliation by NTI for the charges he filed on December 2, 1994, and October 31, 1995. After dismissal by the EEOC and receipt of his right-to-sue letter, he brought suit in federal court.

COURT'S DISCUSSION

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[1] After the court's partial granting of defendant's motion to dismiss, Siddiqui's only remaining claim before the court is his claim discriminatory retaliation.

I. Standard of Review

Summary judgment is appropriate pursuant to Fed. R. Civ. P. 56 when no genuine issue of material fact exists and the moving party is entitled as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The party seeking summary judgment bears the initial burden of demonstrating the absense of a genuine issue of material fact. *See Cleotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the moving party has met its burden, the non moving party 'must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd., v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e) (emphasis added)). Summary judgment is not a vehicle for the court to resolve disputed factual issues. *See Faircloth v. United States*, 837 F. Supp. 123, 125 (E.D.N.C. 1993). Instead, a trial court reviewing a claim at the summary judgment stage should determine whether a genuine issue exists for trial. *See Anderson*, 477 U.S. at 249. In making this determination, the court must view the inferences drawn from the underlying facts in the light most favorable to the non-moving party. *See United States v. Diebold, Inc.* 369 U.S. 654, 655 (1962) (per curiam). Only the disputes between parties that might affect the outcome of the case properly preclude the entry of summary judgment. *See Anderson*, 477 U.S. at 247-48.

In opposing summary judgment, the non-moving party must "set forth such facts as would be admissible in evidence." Fed. R. Civ. P. 56(e). In admissible hearsay cannot be used to oppose summary judgment. *Greensborough Prof. Fire Fighters Ass'n v. Greensboro*, 64 F.3d 962, 967 (4th Cir. 1995). These standards will guide the court's review which follows.

II. Siddiqui's Title VII Retaliation Claim

Absent evidence of direct discrimination, Siddiqui must establish a case of discrimination by the proof scheme

established by the Supreme Court of the United States in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

A. Proof Scheme in Title VII Discrimination Cases

Section 704(a) of the Civil Rights Act of 1964 provides in relevant parts:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, . . . because he has made a charge . . . . under this subchapter.

42 U.S.C. § 2000e-3(a).

To "sharpen the inquiry into the elusive factual question of intentional discrimination," *Texas Dept. of Community Affairs v. Burdines*, 450 U.S. 248 255 n.8 (1981), the United States Supreme Court in *McDonnell Douglas*, established an allocation of the burden of production and an order for the presentation of proof in Title VII discriminatory treatment cases. *See St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 506 (1993) (explaining application of *McDonnell Douglas* scheme). *See Tinsley v. First Union National Bank*, 155 F.3 435, 442 (4th Cir. 1998) (applying *McDonnell Douglas* scheme to retaliation claims). Plaintiff must show that (1) he engaged in a protected activity; (2) his employer took adverse action against him; and (3) there was a causal connection between the protected activity and the adverse action. *See id.* at 443. Evidence of adverse action without a causal connection falls short of proving a prima facie case.

If the plaintiff establishes a *prima facie* case, then an inference of discrimination rises. *See St. Mary's* 509 U.S. at 506-507. The defendant then can offer legitimate,

nondiscriminatory explanations for the allegedly discriminatory acts. *See id.* The employer's burden is of production and not of persuasion; therefore, the employer is not required to prove the absence of discriminatory motive. The plaintiff then bears the ultimate burden of persuasion and must show by a preponderance of the evidence that the defendant's explanations are merely pretext for discrimination or otherwise are not worthy of credence. *See id.* at 507.

NTI contends that it is entitled to summary judgment because Siddiqui has failed to establish a *prima facie* case, and that even if he did, there are nondiscriminatory reasons for NTI's action.

B. Siddiqui's Prima Facie Case

NTI concedes that Siddiqui has met the first two requirement of a *prima facie* case - that Siddiqui engaged in protected activity by filing EEOC charges against the company and that the adverse employment action of not being hired by NTI occurred. However, NTI asserts that that Siddiqui has failed to establish the third element's requirement of a causal connection between the protected activity and adverse action.

Siddiqui's contention is that NTI retaliated against him because he filed three charges with the EEOC. In a discriminatory retaliation action, the alleged discriminatory acts must take place after the filing of a complaint with the EEOC. Therefore, Siddiqui can only establish retaliation by NTI based on events occurring after his first EEOC complaint on November 22, 1994. Not only Siddiqui must use actions occurring after November 22, 1994, but he must also establish a causal connection between those actions and retaliation based on filing the EEOC complaints.

To establish the causal connection, it is "absolutely necessary" that a plaintiff who alleges retaliation establish

that the prospective employer had knowledge of the protected activity. *See Dow v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653 (4th Cir. 1998). Siddiqui's complaint alleges that numerous people discriminated against him; three of which he named specifically - one of NTI's employment specialists Roscoe Judd ("Judd") and two of NTI's vice-presidents, Abdul Khawar and Bill Donovan. (See Amed. Compl. ¶ 7).

The only event that Siddiqui alleges was discriminatory and that occurred after he filed his first EEOC complaint is based on an employment contract he had with Dataskills. Dataskills allegedly referred him to NTI to work on a project and NTI informed Dataskills that Siddiqui was not eligible for rehire. Siddiqui has forecast no evidence that EEOC complaint were the impetus for NTI's action. Normally, an adverse employment action occurring 45 days after the filing of an EEOC complaint might signal a retaliatory act. However, in the present case NTI had made its instance on employing Siddiqui well known before he ever filed a charge with the EEOC. This fact, coupled with Siddiqui's failure to establish any link between the alleged discriminatory conduct and NTI's knowledge of his previous EEOC charges, does not present a material issue of disputed facts requiring trial.

Siddiqui's memorandum in response to defendant's motion for summary judgment is replete with factual allegations of discrimination, but he fails to back up the purported events with "such facts as would be admissible in evidence." Siddiqui relates conversation with an I.I.C. employee, Tammy Alford, and a C.D.I. employee, Brande Hilton, which are pure hearsay and cannot be accepted to rebut the defendant's showing that no material facts exists for trial. Siddiqui also recites an event surrounding an interview with Mike Sutton of NTI, and conversation with Dataskills regarding employment. However he forecasts no evidence, through deposition or affidavit, to support his factual contentions. Of the alleged discriminatory actions,

Siddiqui alleges all but one occurred before he ever filed an EEOC claim.

Nevertheless, if the court accepted all the allegations made by Siddiqui in his memorandum in opposition to defendant's motion for summary judgment, and drew all reasonable inferences in a light most favorable, the court can conclude that NTI did not like Siddiqui, did not trust him, told others not to hire him and said he would never be hired at NTI. But The court cannot conclude that he has established disputed issue of material fact that any one at NTI discriminated against him because of the EEOC charges he had previously filed.

Finally, Siddiqui asserts that NTI abused his pro se status at the deposition and objects to the entire deposition. After a review of deposition, the court does not find a basis for Siddiqui's contention, but to the contrary, finds that the defendant was very patient with an often difficult plaintiff who did not understand the deposition process.

Siddiqui has failed to establish the *prima facie* case of discriminatory retaliation; therefore, defendant's motion for judgment is GRANTED.

CONCLUSION

For the stated reasons, the court GRANTS defendant's motion for summary judgment and DENIES as moot; (1) defendant's motion to strike plaintiff's suggestion of subsequently decided authority; (2) Plaintiff's motion for enlargement of time and (3) plaintiff's motion to move the location of trial. The clerk is directed to close this case.

This is 20th day May, 1999.

s/
MALCOM . J. HOWARD
United States District Judge
Seal of Clerk of Court, s/ Deputy Clerk

At Greenville NC
#9

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant.

(Filed Mar 25, 1999)

This cause comes before the court on the following motions by Plaintiff: motion requesting confirmation of trial by jury; motion to subpoena Defendant's employees; motion to compel discovery by interrogatories; motion to compel discovery by request for production of documents; motion for relief from orders entered on September 30, 1998, and on November 17, 1998; motion to extend time to respond to Defendant's summary judgment motion; motion to strike Defendant's "statement of objections;" and motion to strike Defendant's responses. Responses have been filed, and the time for filing additional responses or replies has run. All of these motions are now ripe for ruling.

BACKGROUND

The factual background of this case is well-known to

the court and has been summarized in previous orders. Very briefly, Plaintiff, a former employee of an affiliate of the Defendant, claims he suffered impermissible discrimination on the basis of race, sex, age, national origin, and religion. He also claims Defendant retaliated against him for filing EEOC complaints. In an order dated May 11, 1998, District Judge Malcolm Howard dismissed all but the retaliation claim. Plaintiff filed a motion to reconsider, which was denied by order on August 10, 1998.

On October 15, 1998, Plaintiff served his First Set of Interrogatories and First Request for Production of Documents on Defendant. Defendant served its responses on November 17, 1998, the last day of discovery, raising objections to many of the interrogatories and to the request for production of documents. On December 16, 1998, after two phone conferences with defense counsel failed to resolve the parties' dispute, Plaintiff filed the present motions to compel. The court will consider Plaintiff's motions seriatim.

I. Motion to Confirm Jury Trial

Plaintiff seeks confirmation that his case will proceed to a jury trial. The court notes that Plaintiff asked for a jury trial in his complaint and has not rescinded that request. Therefore, if there are genuine issues of material fact that must be decided by a jury, then a jury trial will be held. At this point, it is too early to make that determination. Plaintiff's motion to confirm jury trial is DENIED.

II. Motion to Subpoena Defendant's Employees

Plaintiff has filed a motion in which he asks the court "to grant him to subpoena for the purposes of discovery some of the supervisors who have direct knowledge of the matter but the defendant has perjuriously failed to identify

them and refused a direct contact with them." Plaintiff does not identify which supervisors he seeks to subpoena. As he explains, "The names of the supervisors [sic] are not included here for reason of anonymity and finding out this Courts [sic] opinion of maintaining their anonymity in the matter till it is necessary to disclose to the Defendant. From these supervisors a discovery as a neutral person is require [sic]."

Defendant responds that this motion does not comply with the requirements of Federal Rule of Civil Procedure 45. The court agrees. If Plaintiff wishes to subpoena witnesses, he must follow the rules of civil procedure. Plaintiff's motion is DENIED.

III. - Motions to Compel

Plaintiff has moved to compel responses to interrogatories and request for documents. Federal Rule of Civil Procedure 26(b) (1) allows discovery so long as it "appears reasonably calculated to lead to the discovery of admissible evidence.". Discovery is meant "to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 473 U.S. 340, 351 (1978). Having made these general statements, the court believes there are legitimate bases for limiting discovery in the case at bar.

First, Plaintiff's discovery requests relating to race, sex, national origin, religion and age are irrelevant and non-discoverable. Judge Howard dismissed all of these claims, leaving only the retaliation claim. Defendant must answer questions and turn over documents relevant to, or tending to produce relevant evidence about, the retaliation claim. The other discrimination claims are no longer before the court and are not proper subjects of discovery. Plaintiff argues that Defendant's alleged discrimination is relevant to the

retaliation claim because it was the subject of his EEOC complaints. However, information regarding the alleged discrimination is not necessary to prove Plaintiff's retaliation claim. Plaintiff's argument that Defendant's allegedly retaliatory actions constitute a "continuing violation" also fails. The "continuing violation" theory does not allow him to bootstrap his discrimination allegations into the retaliation case.

Second, it is appropriate to limit discovery to a reasonable time period. *See, e.g., Raddatz v. The Standard Register Co.*, 177 F.D.R. 446 (D. Minn. 1997) (limited to two years prior to termination); *Obiajulu v. City of Rocheser Dep't of Law*, 166 F.D.R. 293, 296 (W.D.N.Y. 1996) (discovery allowed for three-year period). Plaintiff seeks information from as far back as 1984, when he was hired by Defendant. Such information is simply irrelevant to Plaintiff's remaining claim.

Defendant initially chose to limit its responses to the time period between November 1, 1995, and April 2, 1996, the time period during which Plaintiff's EEOC complaint charged retaliation. According to subsequent filings, Defendant has agreed to expand this time period by two years, dating back to November 1, 1993. This time period allows Plaintiff discovery during the period leading up to the alleged retaliation. Plaintiff would prefer that the court allow discovery back to 1989, the year in which he left Defendant's employment. However, with a few exceptions discussed below, he has not explained how information dating back that far is relevant to his claim of retaliation occurring in 1995 and 1996.

Plaintiff cites *Lyoch v. Anheuser-Busch Companies, Inc.*, for the proposition that courts have allowed discovery over longer time periods. *See* 164 F.D.R. 62, 67 (E.D. Mo. 1995). The court has reviewed *Lyoch* and notes that the discovery was allowed over an eight-year period so that the Plaintiff could prove a pattern or practice of discrimination.

Proving such a pattern requires evidence spanning a longer time period. In the case at bar, Plaintiff has not alleged a pattern or practice of discrimination. Proof of retaliation for filing an EEOC complaint does not require discovery over such an extended period.

Third, Defendant correctly objects to requests for information relating to other facilities, except to the extent the information relates to the retaliation claim. Plaintiff was employed at the Defendant's Research Triangle Park office. Discovery reasonably calculated to lead to admissible evidence of retaliation by that office is permissible. To the extent Plaintiff alleges that facilities other than Defendant's RTP site engaged in retaliation, that information too would be discoverable. Any other discovery focused on other offices is not relevant of likely to lead to admissible evidence. *See EEOC v. Packard Elec. Div.*, 569 F.2d 315 (5th Cir. 1978).

The court will now discuss each interrogatory and request individually:

Interrogatories

1. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law.

2. This interrogatory is not likely to lead to the discovery of relevant information regarding the remaining issue, retaliation.

3. The information sought in this interrogatory could be relevant to rebut the defense that Plaintiff's subpar performance contributed to Defendant's decision not to re-hire Plaintiff. Defendant's layoff policy, if one exists, might produce evidence regarding the level of performance required and thus might shed new light on the level of Plaintiff's performance. Therefore, Defendant is ORDERED to answer the first clause of this interrogatory, explaining its layoff policy as it existed in 1989, if it had one. The rest of

the interrogatory is properly objectionable because it calls for legal conclusions and is not likely to lead to the discovery of admissible evidence.

4. The information sought in this interrogatory could be relevant to rebut the defense that Plaintiff's subpar performance contributed to Defendant's decision not to re-hire Plaintiff. To the extent that this request seeks information regarding Plaintiff's performance, it seeks properly discoverable information. Defendant is ORDERED to respond to the portions of the question relating to Plaintiff's layoff. However, Plaintiff's request for discovery regarding the performance of others is not even tangentially related to the retaliation claim. This portion of the interrogatory seems designed to lead to information tending to show discrimination at the time of Plaintiff's layoff, which is not relevant to this case. This part of the interrogatory is not likely to lead to the discovery of relevant information regarding the remaining issue, retaliation, and the Defendant was justified in choosing not to respond to it.

5. Plaintiff's request for discovery regarding the performance of others is not discoverable for the reasons explained in the previous ruling.

6. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law. In addition, Defendant has agreed to supplement this response.

7. This interrogatory seeks information outside of the relevant time period. Plaintiff claims retaliation occurring in 1995 and 1996.The exit interviews took place in 1989. However, it is possible that those exit interviews could contain information regarding Plaintiff's performance. If so, this information could be relevant to rebut the defense that Plaintiff's subpar performance contributed to Defendant's decision not to re-hire Plaintiff. Therefore Defendant is ORDERED to identify each of it's employees who conducted an exit interview with Plaintiff in 1989 and a summary of the information acquired in that interview.

8. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required

by law.

9. This interrogatory was vague and does not seek information directly relevant to the lawsuit. The question does not refer to any particular incident, but rather seeks a general philosophy of business. It is simply not an appropriate interrogatory.

10. This interrogatory is not likely to lead to the discovery of relevant information regarding the remaining issue, retaliation.

11. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law by referring Plaintiff to a previous answer.

12. Plaintiff's performance is relevant to this action, as Defendant claims his subpar performance was one of the reasons it chose not to re-hire him. However, as explained previously, Plaintiff's request for discovery regarding the performance of others is not even tangentially related to the retaliation claim. In addition, the interrogatory is unduly burdensome, and Plaintiff has failed to narrow its scope.

13. This interrogatory apparently not served on Defendant with the others. According to Defendant, upon receiving this interrogatory, it answered. Plaintiff has not indicated otherwise. Without knowing the content of the interrogatory, Defendant's objections of Plaintiff's complaints, the court cannot grant a motion to compel.

14. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law.

15. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law.

16. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law. It proffered the requested documents as part of its response to Request No.2 of Plaintiff's Request for Production of Documents.

17. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law.

18. This interrogatory is not likely to lead to the discovery of relevant information regarding the remaining claim, retaliation. It is also unduly burdensome.

19. This interrogatory is not likely to lead to the discovery of relevant information regarding the remaining claim, retaliation.

20. Although it raised an objection, Defendant proceeded to answer this interrogatory to the extent required by law.

21. Although it raised two objections, Defendant proceeded to answer this interrogatory to the extent required by law.

22. Although it raised two objections, Defendant proceeded to answer this interrogatory to the extent required by law.

23. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law.

24. This question is not properly an interrogatory.

25. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law.

26. The information sought in this interrogatory likely is privileged. The interrogatory certainly is vague and difficult to interpret. Although it raised several objections, Defendant proceeded to answer this interrogatory to the extent required by law.

27. This interrogatory seeks some information that Defendant need not turn over until the final pre-trial conference and some information Defendant is simply not required to turn over. If Plaintiff wished to learn the substance of witnesses' testimony, he should have deposed them.

Document Requests

1. Although it raised several objections, Defendant agreed to make Plaintiff's personnel file available to him.

2. Although it raised several objections, Defendant

agreed to provide these documents subject to a protective order, and it has done so.

3. This request seeks information the Defendant need not turn over until the final pre-trial conference.

4. This request is premature and inappropriate. Plaintiff is not entitled to such documents at this point in the litigation. If a witness takes the stand at trial, he may ask the witness on cross-examination which documents they reviewed to prepare.

5-7. Although it raised several objections, Defendant proceeded to provide responsive documents pursuant to a protective order.

8. Although it raised several objections, Defendant answered, indicating that there were no responsive documents.

9. In this request for production of documents, Plaintiff seeks documents relating to any job interview Defendant's conducted with him since 1989. Defendant objects that this request is overly broad, unduly burdensome, and seeks irrelevant information which is proprietary and confidential. Defendant also objects that the information is irrelevant to alleged retaliation in1995 and 1996. However, it has agreed to include information dating back to 1993.

The court holds that documents relating to any interview between November 1, 1993, and April 2, 1996, might contain relevant information regarding the alleged retaliation. These documents might include evaluation, memos or other documents in which Plaintiff's employment inquiry or status was discussed. To the extent any such documents exist, Defendant is ORDERED to turn them over to Plaintiff.

In summary, for the great majority of the requests, Plaintiff's motion to compel is DENIED, as Defendant has complied to the maximum extent required. However, Plaintiff's motion is ALLOWED IN PART as to interrogatories 3, 4 and 7 and Request for Documents 9. Any additional discovery should be served on Plaintiff on or before April 2, 1999.

IV. Motion for Relief from Orders Entered on September 30, 1998 and November 17, 1998

Plaintiff seeks relief from two of this courts orders denying an extension of the discovery period. Plaintiff claims that Defendant's bad-faith actions in stalling discovery justify modification of the scheduling order. As discussed below, the court does not find that the Defendant has committed any bad-faith action. Plaintiff also argues that there are sufficient changed circumstances to entitle him to a lengthier discovery period. The court disagrees. Even though the court has ruled that Plaintiff is entitled to a few more documents and the answers to a few more interrogatories, these rulings do not entitle Plaintiff to additional discovery time. If Plaintiff had made his discovery requests at an earlier time, he might have made use of some of this information, perhaps to schedule depositions. However, the fact that he waited until a month before the end of the discovery period to serve his first requests weighs against granting him more time. the fact that he is *pro se* does not excuse this dilatory conduct. Because there is no sound basis for reconsideration of the previous orders, Plaintiff's motion is DENIED.

V. Motion to Extend Time to Respond to Defendant's Summary Judgment Motion

Plaintiff has moved for an extension of time to respond to Defendant's summary judgment motion. Defendant responds that it does not oppose an extension of 20 days after service of it's supplemental discovery. It also

informs the court that it served the supplemental discovery on March 10, 1999. The court notes however that additional discovery may be served on or before April 2, 1999.

For good cause shown, Plaintiff's motion for extension of time to respond to Defendant's summary judgment motion is ALLOWED. The deadline for response is reset for April 16, 1999.

VI. Motion to Strike Defendant's "Statement of Objections"

According to Local Rule 23.03, when a party files its response and objections to a set of interrogatories, it must also include a verified cover sheet stating that each question is answered in full, except to the extent objections are made, and stating in what capacity the respondent is acting. In this case, Defendant failed to include this cover sheet when it served its responses and objection. Defendant states that its failure to include the cover sheet was inadvertent.

While Plaintiff is correct that Defendant's failure to include this cover sheet, or "statement of objections," is a technical violation of the Local Rules, Defendant's failure has not resulted in any prejudice to Plaintiff. He received the answers and objections and was able to discuss those objections with Defendant in at least two phone conversations. He also was able to file a motion to compel without the help of the statement of objections. Plaintiff has failed to show that Defendant's failure to serve the statement of objections has harmed him in anyway. For that reason, Plaintiff's motion to strike is DENIED.

VII. Motion to Strike Defendant's Responses

Plaintiff moves to strike several of the Defendant's responses on the ground that they were improperly served.[1]

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[1] Plaintiff also claims that the court should strike the responses because of

Plaintiff notes that in each instance, Defendant served him by UPS overnight delivery rather than by U.S. mail.

Some courts have held that while service by U.S. mail is complete upon placing the document in the mail, service by private courier is not complete until the other party receives the document. *See Transco Leasing Corp. v. United States*, 992 F.2d 552, 554 n.2 (5th Cir. 1993). Other courts have decided that service by private courier satisfies the requirements of Federal Rule of Civil Procedure 5(b). *See Magnuson v. Video Yesteryear*, 85 F.3d 1424, 1430-31 (9th Cir. 1996).

This court need not decide this issue here, because Plaintiff has suffered no prejudice from the allegedly improper service. Defendant chose to serve Plaintiff by overnight delivery after Plaintiff complained that U.S. mail took too long. Because Plaintiff lives in Arizona, service by U.S. mail takes several days. By serving Plaintiff by overnight delivery, Defendant assured that Plaintiff received its responses several days sooner than he otherwise would have.

By objecting to this service, **Plaintiff is cutting off his nose to spite his face** (emphasis added). Defendant now represents that it never again will serve Plaintiff by any means other than U.S. mail. This guarantees that Plaintiff will receive his documents in a much less timely fashion. The court admonishes Plaintiff to use common sense, as the filing frivolous motions such as this results in a waste of resources by all parties. Plaintiff's motion to strike is DENIED.

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willful "misrepresentation and deception" on the part of defense counsel. The court has reviewed Plaintiff's allegations and finds them to be meritless. Plaintiff is warned that continued unfounded allegations against Defendant or defense counsel may result in sanctions.

CONCLUSION

For the foregoing reasons, Plaintiff's motion requesting confirmation of trial by jury is DENIED; motion to subpoena Defendant's employees is DENIED; motion to compel discovery by interrogatories is allowed IN PART as to interrogatories 3, 4 and 7 and otherwise DENIED; motion to compel discovery by request for production of documents is ALLOWED IN PART as to request 9 and otherwise DENIED; motion for relief from orders entered on September 30, 1998, and on November 17, 1998 is DENIED; motion to extend time to respond to Defendant' summary judgment motion is ALLOWED; motion to strike Defendant's "statement of objections" is DENIED; and motion to strike Defendant's responses is DENIED.

SO ORDERED, this the 22 day of March, 1999.

s/ Delsia Heath
Deputy Clerk

s/ ALEXANDER B. DENSON
United States District Judge

SEAL & CLERK'S
CERTIFICATION
STAMP

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION
No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Mar 25, 1999)**

THIS CAUSE is before the court on Plaintiff's motion for relief form court's orders dated May 11, 1998, and August 10, 1998. Plaintiff seeks reconsideration of this court's May 11, 1998, order dismissing claims of race, age, sex, religion, and national origin discrimination. Plaintiff previously filed a motion to reconsider, which this court denied on August 10, 1998. This motion represents Plaintiff's third attempt to litigate the same issue.

A thorough review of Plaintiff's latest filing reveals that Plaintiff neither asserts new facts nor raises new legal arguments in his motion. Plaintiff has presented no new grounds pursuant to Rule 60, Fed. R. Civ. P., which would justify relief from the court's order of partial dismissal. Therefore, Plaintiff's motion for relief from orders is DENIED.

SO ORDERED, this the 23rd day of March, 1999.

SEAL & CLERK'S CERTIFICATION STAMP

s/ Delsia Heath Deputy Clerk

s/_____ MALCOM J, HOWARD United States District Judge

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Jan 22, 1999)**

THIS CAUSE is now before the court on the Plaintiff's "Motion for Permission to Reply to Defendant's Response to Motions to Compel Discovery." Replies are not permitted in discovery disputes. Local Rules 4.06(b) and 23.06(c), E.D.N.C. Plaintiff filed an articulate memorandum in support of his motion to compel this discovery and Defendant has responded. The court has the matter under advisement. Plaintiff's motion to file a Reply IS DENIED as being unnecessary and unauthorized by this court's rules.

SO ORDERED, this the _22nd_ day of January, 1999.

SEAL & CLERK'S	s/	s/_____
CERTIFICATION	Lisa Lee	ALEXANDER B. DENSON
STAMP	Deputy Clerk	United States Magistrate Judge

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Jan 22, 1999)**

Pursuant to motion by defendant, IT IS HEREBY ORDERED that the time within which the defendant may file a response to plaintiff's Motion to Subpoena Defendant's Employees and Motions for Relief from Orders be extended to and including the 20th day of January, 1999.

This the 21st day of January, 1999.

SEAL & CLERK'S CERTIFICATION STAMP

s/ Lisa Lee
Deputy Clerk

s/_____
(unnamed)

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Jan 22, 1999)**

Pursuant to motion by defendant, IT IS HEREBY ORDERED that the time within which the defendant may serve its Statement of Objections to Plaintiff's First Set of Interrogatories be extended to and including the 20th day of January, 1999.

This the 21st day of January, 1999

SEAL & CLERK'S CERTIFICATION STAMP
s/ Lisa Lee
Deputy Clerk

s/_____
(unnamed)

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Jan 13, 1999)**

This matter is before the Court on the Plaintiff's Response in Opposition to the Defendant's Motion to Enlarge Time. By Order dated January 6, 1999, the Court granted the Defendant's motion for a brief extension of time. As such, the Court will treat the Plaintiff's Opposition as a Motion for Reconsideration.

After reviewing the procedural history of the case, the court remains convinced that the brief extension of time granted to the Defendant was warranted, will not adversely effect the Plaintiff and will not effect the scheduled trial date in June 1999. For these reasons, Plaintiff's Motion for Reconsideration is DENIED.

This 11th day of January, 1999.

SEAL & CLERK'S CERTIFICATION STAMP	s/ Lisa Lee Deputy Clerk	s/_____ DAVID W. DANIEL, Clerk DWD:kt

APPENDIX L

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Jan 7, 1999)**

Pursuant to motion by defendant, IT IS HEREBY ORDERED that the time within which the defendant may file a response to plaintiff's Motion to Compel Production of Documents, Motion to Compel Discovery by Interrogatories, Motion to Subpoena Defendant's Employees, and Motion for Relief from Orders be extended to and including the 13th day of January, 1999.

This the 6th day of January, 1999.

SEAL & CLERK'S CERTIFICATION STAMP	s/ Lisa Lee Deputy Clerk	s/_____ **(unnamed)**

APPENDIX M

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Dec. 16, 1998)**

Pursuant to motion filed by defendant, IT IS HEREBY ORDERED that the time within which the parties may file dispositive motions with the Court, currently due on or before December 17, 1998, be extended to and including the 23rd day of December, 1998.

This the 15th day of December, 1998.

SEAL & CLERK'S CERTIFICATION STAMP

s/ Lisa Lee
Deputy Clerk

s/_____
(unnamed)

APPENDIX N

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Nov. 17, 1998)**

THIS CAUSE is now before the court on the Plaintiff's Motion to Reconsider Order Denying Extension of Discovery Period, filed October 16, 1998 and Plaintiff's "Motion to Amend Preceding Motion to Reconsider Order Denying Extension of Discovery and To Reject Defendant's ill Provoking Response", filed October 30, 1998. Responses have been filed in opposition to these motions and they are ripe for ruling.

The October 30 filing IS ALLOWED and the matters contained therein have been considered in the following ruling on the October 16 motion.

A Scheduling Order was filed in this case on July 1, 1998 following the court's ruling dismissing all of Plaintiff's claims except retaliation. The Scheduling Order allowed discovery to continue to October 2, 1998, imposed a motion filing deadline of November 2, 1998 and set the trial for February 8, 1999. On July 22, Plaintiff filed a Motion to Extend Discovery Time and the Trial Date, noting that the

court's plan was "unacceptable." The court allowed Plaintiff's motion in part, extending discovery to November 17, 1998, the motion filing deadline to December 17, 1998 and resetting the trial for June 14, 1999. On September 17, 1998 Plaintiff filed another Motion to Extend The Time to Conduct the Discovery. This motion was denied in an Order filed September 30, 1998 partly because Plaintiff had not initiated any discovery a year and a half after he began the action and three months after the Scheduling Order was entered. Now the Plaintiff has filed the present Motion to Reconsider.

Earlier rulings distilled this action to one claim, that of retaliation. The discovery period, as extended once at Plaintiff's request, was ample time for the parties to gather available information relevant to that single claim. Instead of pursuing discovery with reasonable diligence, Plaintiff waited three and a half months to even begin this process. He will not be allowed to extend the discovery period to recoup the time he has squandered. Accordingly, Plaintiff's Motion to Reconsider Order Denying
Extension of Discovery Period IS DENIED.

SO ORDERED, this the 26th day of November, 1998.

SEAL & CLERK'S	s/	s/_____
CERTIFICATION	Lisa Lee	ALEXANDER B. DENSON
STAMP	Deputy Clerk	United States Magistrate Judge

APPENDIX O

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Sep. 30, 1998)**

THIS CAUSE is now before the court on the Plaintiff's Motion to Extend Discovery Time, filed September 17, 1998. Response has been filed in opposition to this motion and it is ripe for ruling.

This is the second time Plaintiff has requested an extension of the discovery period. Plaintiff began this action on April 21, 1997, almost a year and a half ago. Although the Scheduling Order has been previously extended at Plaintiff's request to grant him additional time for discovery, Defendant reports that Plaintiff has not undertaken any discovery whatsoever. The grounds asserted for the present motion are: that plaintiff has suffered emotional distress and dizziness, that he needs to discover a lot of information that Defendant might resist, and that he is *pro se*. This is insufficient to justify yet another disruption of the plan set out in the Scheduling Order, as previously amended at Plaintiff's request, particularly in light of Plaintiff's complete failure to engage in any discovery to date. He has

not offered any medical evidence of a disability to prosecute this action and there is no basis for his claim that Defendant might resist appropriate discovery. Plaintiff's repeated claim of being at a disadvantage because he is *pro se* is unavailing. If Plaintiff has a meritorious claim and cannot afford to retain counsel, many attorneys would be willing to represent him on a contingency fee basis. If he has been unable to find counsel who would accept the case on a contingency fee, it would likely be because those counsel have concluded that **the case is not meritorious. In the latter event, Plaintiff should consider whether to voluntarily dismiss his complaint rather than continuing to spend time, money and energy in the case that can run the risk of having costs taxed against him pursuant to Rule 54(d)** (emphasis added).

Plaintiff's Motion to Extend Discovery Time IS DENIED.

SO ORDERED, this the 29th day of September, 1998.

SEAL & CLERK'S CERTIFICATION STAMP	s/ Lisa Lee Deputy Clerk	s/_____ ALEXANDER B. DENSON United States Magistrate Judge

APPENDIX P

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Aug. 10, 1998)**

This matter is before the court on three motions which are ripe for ruling: (1) plaintiff's Motion to Resubmit "Plaintiff's Memorandum in Support of Plaintiff's Motion to Reconsider Order" To Correct Typing Errors; (2) plaintiff's Motion to Reconsider Order; and, (3) plaintiff's Motion to Reject Defendant's Response to Plaintiff's Motion to Amend Plaintiff's Discovery Plan.

I. Motion to Resubmit "Plaintiff's Memorandum in Support of Plaintiff's Motion to Reconsider Order"

The clerk has advised the court that the resubmitted copy of the plaintiff's Memorandum in Support of Plaintiff's Motion to Reconsider Order which contained typographical corrections has already been substituted into the file. Therefore, plaintiff's motion is DENIED AS MOOT.

II. Motion to Reconsider Order

Plaintiff seeks the court's reconsideration of its order filed May 11, 1998, granting defendant's motion to dismiss plaintiff's claims of race, age, sex, religion, and national origin discrimination for failure to exhaust administrative remedies. A thorough review of the record reveals that Plaintiff neither asserts new facts nor raises new legal arguments in his motion for reconsideration. Plaintiff has presented no new grounds pursuant to Rule 60, Fed. R. Civ. P., which would justify relief from the court's order of partial dismissal. Therefore, plaintiff's Motion to Reconsider Order is DENIED.

III. Motion to Reject Defendant's Response to Plaintiff's Motion to Amend Plaintiff's Discovery Plan

On July 1, 1998, the court filed an order and scheduling order in this case allowing plaintiff's Motion to Amend Discovery Plan. Therefore, plaintiff's Motion to Reject Defendant's Response to Plaintiff's Motion to Amend Plaintiff's Discovery Plan is DENIED AS MOOT.

Based on the foregoing, plaintiff's Motion to Resubmit "Plaintiff's Memorandum in Support of Plaintiff's Motion to Reconsider Order" To Correct Typing Errors is DENIED AS MOOT, plaintiff's Motion to Reconsider Order is DENIED, and plaintiff's Motion to Reject Defendant's Response to Plaintiff's Motion to Amend Plaintiff's Discovery Plan is DENIED AS MOOT.

This the 10th day of August, 1998.

SEAL & CLERK'S CERTIFICATION STAMP
At Greenville, NC
#24MJ

s/ Lisa Lee
Deputy Clerk

s/_____
MALCOLM J, HOWARD
United States District Judge

APPENDIX Q

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed July 10, 1998)**

This matter is before the court on the Defendant's Motion for an Extension of time to respond to Plaintiff's Motion to Reconsider. For good cause shown, Defendant shall have through and including July 14, 1998 within which to respond to Plaintiff's Motion to Reconsider.

This 8th day of July 1998.

SEAL & CLERK'S CERTIFICATION STAMP	s/ Delsea Heath Deputy Clerk	s/_____ DAVID W. DANIEL, Clerk

APPENDIX R

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff

v.

NORTHERN TELECOM, INC.,

Defendant.

ORDER EXTENDING TIME TO FILE MOTION FOR RECONSIDERATION

(Filed June 17, 1998)

This matter is before the court on the Plaintiff's Motion to accept filing of Plaintiff's Motion to Reconsider Order. For good cause shown and based on excusable neglect, the Plaintiff's motion to reconsider received by the court on June 9, 1998 shall be considered timely filed. The plaintiff is warned that pleadings are not deemed filed until they are physically received in the Clerk's Office. The mere mailing or other posting of a pleading does not constitute filing. A party submitting a pleading assumes the risk that their chosen method of delivery will result in the timely delivery of the pleading to the Court.

This 15th day of July 1998.

SEAL & CLERK'S CERTIFICATION STAMP

s/ Delsia Heath
Deputy Clerk

s/_____
DAVID W. DANIEL, Clerk

APPENDIX S

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Jun 4, 1998)**

This matter is before the court on the Plaintiff's motion for extension of to request reconsideration. For good cause shown, Plaintiff shall have through and including June 8, 1998 within which to file a motion to request reconsideration of the court's May 11, 1998 order granting partial dismissal of plaintiff's claim.

This 2nd day of June 1998.

SEAL & CLERK'S CERTIFICATION STAMP

s/ Delsia Heath
Deputy Clerk

s/_____
DAVID W. DANIEL, Clerk

APPENDIX T

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed May 11, 1998)**

This matter is before the court on defendant Northern Telecom's (NTI) motion pursuant to Fed. R. Civ. P. 12(b)(1) and (6) to dismiss plaintiffs claim that NTI discriminated against him because of his race, sex, age, religion, and national origin. Defendant contends plaintiff failed to exhaust administrative remedies for this claim by failing to delineate claims for discrimination based upon race, sex, age, religion, and national origin in the charge he filed with the Equal Employment Opportunity Commission (EEOC). Plaintiff has responded, and this matter is rate for adjudication.

STATEMENT OF THE CASE

Plaintiff was employed by NTI as a senior engineer from July 30, 1984, until April 20, 1989, when NTI laid off plaintiff and eliminated his position. Plaintiff, who is proceeding *pro se*, alleges in the present action that NTI refused to rehire him and "blacklisted" him at other

companies, thereby preventing plaintiff from obtaining employment. Plaintiff contends NTI discriminated against him because he is a forty-eight-year-old Asian Indian who has filed four EEOC charges complaining of NTI's actions. Plaintiff charges that NTI's actions violated Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000 *et seq.*

NTI contends that Plaintiff's claims that NTI unlawfully discriminated against him because of his race, age, sex, national origin and religion must be dismissed because plaintiff did not raise this issue in his fourth and most recent charged with the EEOC. NTI points out that on April 8, 1996, charge of discrimination he filed with the EEOC, the plaintiff checked only the box labeled "RETALIATION," leaving other boxes, including those labeled "RACE," "AGE", "SEX", "RELIGION" and "NATIONAL ORIGIN" blank, on the "CAUSE OF DISCRIMINATION BASED ON" section of the form. (*See* EEOC charge of 4/2/96, attached as Ex. D to Def.'s Reply to Pl.'s Response to Def.'s Partial Mot. to Dismiss.) Plaintiff also alleged no facts relating to a claim for race, age, sex, national origin or religion discrimination on the portion of the form calling for a description of the alleged discriminatory events. Instead, plaintiff recited facts relating only to his claim of retaliatory discharge.

Defendant argues that because the claim in plaintiff's complaint of discrimination based on theories other than retaliation exceed the scope of his administrative charge, which alleges only retaliation, the court should dismiss plaintiff's race, age, sex, religion and national origin discrimination claims for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

Plaintiff argues that the when he filed the charge alleging retaliatory discrimination by the EEOC ("the fourth charge"), the agency still was investigating his earlier-filed complaints alleging race and age discrimination. Plaintiff

further contends that by marking the continuing action box in the section of the charging form titled "DATE DISCRIMINATION TOOK PLACE," EEOC "indicated to plaintiff that all three pending charges are like one charge." (*See* Pl.'s Mem. Supp. Pl.'s Resp. to Def.'s Partial Motion to Dismiss, paragraph 2, at 4.) Plaintiff explains that "in order to get the charges filed instead of time barred, plaintiff had to sign the charges as prepared by EEOC..... EEOC's charge intakers always insisted on having one or two causes of discrimination only. They used from friendly advice to the threats of being time barred from filing to keep the charges the way they have written." *Id.*, ¶¶ 7, 9. Plaintiff also reports that after he received a copy of the November 22, 1994, charge of discrimination he filed with the EEOC, he mailed a letter to the EEOC describing the facts that supported his allegations because the discrimination charges "as drafted by [the EEOC] [did] not contain enough substance." (Letter of 11/28/94, attached as Ex. G to Pl.'s Mem. Supp. Pl.'s Response to Def.'s Partial Mot. to Dismiss.)

COURT'S DISCUSSION

Title VII requires a plaintiff to file an EEOC charge against the person or entity engaged in discrimination before filing a lawsuit in federal court. *See* 42 U.S.C. 2000-e(5). This exhaustion of administrative remedies is central to Title VII's statutory scheme because it gives the EEOC an opportunity to investigate discriminatory practices and to promote voluntary compliance and conciliatory efforts. *See Williams v. Little Rock Mun. Water Works*, 21F.3d 281, 221 (8th Cir 1994). To prevent plaintiffs who ultimately file Title VII claims in federal court from circumventing the statutory prerequisite of administrative redress, "[o]nly those discrimination claims stated in the initial charge, those reasonably related to the original complaint, and those developed by a reasonable investigation of the original complaint may be maintained in a subsequent Title VII lawsuit." *Evans v. Technologies Applications and Serv. Co.*,

80 F.3d 954, 962 (4th Cir. 1996). As this court explained in *Alphonse v. Northern Telecom, Inc.*, 776 F. Supp. 1075 (E.D.N.C. 1991), the controlling factor in determining whether the claims set forth in a civil action fall within the scope of the EEOC investigation is not what the EEOC actually investigated, "but to what could reasonably be expected to grow from the original complaint." *Id.* at 1080 (citing *Powers v. Grinnell Corp.*, 915 F.2d 34, 38-39 (1st Cir 1990)).

Last November this court granted a partial motion to dismiss the filed by NTI in a case remarkably similar to this action. *See Williamson v. Northern Telecom, Inc.*, No. 5:97-CV-544-H3 (E.D.N.C. November 13, 1997). In *Williamson*, the plaintiff sought to recover for allegedly unlawful discrimination by NTI based on race and retaliation, but had failed to check the "RACE" box or described race-related activity on her EEOC form. Instead, Williamson insisted that NTI's motion should be denied because "the second administrative charge describing retaliatory actions is based upon the first administrative charge alleging race discrimination." This court noted that the Court of Appeals for the Eighth Circuit had rejected a strikingly similar argument in the *Williams v. Little Rock Mun. Water Works*, where the *pro se* plaintiff had failed to alleged discrimination based on race on the form she filed with the EEOC alleging retaliatory discharge.[1]

---

[1] See Williams, 21 f.3d at 222-223. Williams filed an EEOC charge in 1990 and alleged that her employer had retaliated against her for filing an EEOC charge of race discrimination three years earlier. See id. at 222. Williams checked the box "RETALIATION" on her 1990 EEOC form and left the box marked "RACE" empty. See id. at 223. She then recounted facts in the particular section of the form that only related to her claim of retaliation. Williams stated: "I have been denied a promotion and a merit raise as of October 3, 1990, because I filed a previous charge of discrimination. I believe I am being retaliated against for filing the charge in violation of Title VII." Id. at 222 (internal quotations omitted). In response to Williams' complaint, the EEOC investigated only the allegations of retaliation set forth in the charge. See id. at 223

Williams, who was proceeding *pro se*, had argued that the district court should not have dismissed her claims for what amounted to a mere technicality. *See id.* The Court of Appeals for the Eighth Circuit found that *Williams'* 1990 EEOC charge and supporting affidavit "specifically and unambiguously alleged that [her former employer] retaliated against her because she filed a charge with the EEOC in January 1987." *Id.* The *Williams* court stated that "unconstrained reading of *Williams*' charge" revealed "not even a hint of a claim of race discrimination," and that retaliation properly was the only claim addressed by the EEOC. *Id.* Therefore, the court of appeals upheld the district court's grant of summary judgment for the defendant as to Williams' race discrimination claims. *See id.*

Applying the Eighth Circuit's reasoning to the plaintiff's claims in *Williamson*, this court noted that it was unpersuaded by *Williamson's* assertions that she was a novice and had not prepared the EEOC form or reviewed its heading, that her claims of race discrimination were closely related to her claims of retaliation, and that one would properly have expected the EEOC to have investigated her earlier allegations of race discrimination in its investigation of her retaliation claim. This court further noted that despite *Williamson's* assertion that she was a novice, she had previously filed an EEOC charge alleging race discrimination, on which she checked the box marked "RACE" and set forth allegations of race discrimination in the particulars section of that form.

The court explained that:

> [w]hile plaintiff is not an attorney, the court does not consider her so unfamiliar with EEOC forms as to render excusable her failure to allege race discrimination in her 1997 EEOC charge. Even if plaintiff was instructed to ignore the heading of

> the form by the person who prepared her EEOC charge, certainly plaintiff reviewed the particulars section of the form, which contained no description of race discrimination.

Williamson, slip op. at 5-6.

This court can included in *Williamson* that:

> [Williamson] could not reasonably have expected an EEOC investigation into alleged race discrimination to grow from her statements that she was suspended and discharged in retaliation for having filed a previous EEOC charge . . ."[] Nothing recorded by the plaintiff on the January 1997 EEOC charge hints that plaintiff was seeking an EEOC investigation into alleged race discrimination, and such discrimination is not reasonably related to a later-filed claim of retaliation that contains no allegations of race discrimination.

Id. at 6.

Likewise, the plaintiff in this case has alleged no facts that excuse his failure to allege discrimination based upon race, age, sex, religion and national origin on the form he filed with the EEOC. Plaintiff correctly points out that he made many of these allegations in earlier EEOC complaints, but the court notes that plaintiff's time for filing suit based upon those charges has expired. *See* 42 U.S.C. 2000e-5(f)(1).

Plaintiff also alleges that the EEOC determined which boxes on each form were marked and prevented complainants from changing the charge forms by threatening

them that their claims might be barred if changes were made. However, plaintiff's suggestion that EEOC intimidated him into adopting in the form as EEOC typed it is refuted by the November 28, 1994, letter plaintiff wrote EEOC explaining his displeasure with the form they had created and setting forth specific facts he believes should have been included. Plaintiff presented no evidence that he objected to the EEOC's description of his complaints on the April 2, 1996, form, nor has he articulated a reasonable basis for his belief that checking the continuing action box incorporated all his previous claims into his claim for retaliatory discharge.

Plaintiff also claims that "[b]etween 12/2/94 and 4/2/96 EEOC was investigating on all four charges about the same subject matter 'discrimination in rehiring' for causes including age, race, national origin, and retaliation." (Pl.'s Mem. Supp. Pl.'s Response to Def.'s Partial Mot. to Dismiss, 5, at 2.) However, the right to sue letter EEOC sent to plaintiff after investigating his April 2, 1996, charge indicates that the EEOC only investigated plaintiff's retaliation claims, by stating:

> The evidence obtained by the commission indicates that Respondent did not give out any bad reference on you, as alleged. The evidence reveals that you were a former employee who voluntarily left the company with a grant of severance pay when your performance was rated at a sub-standard level. Subsequently, Respondent became aware that you use to dishonest methods to gain entry to its promises; thereafter, you were deemed to be unsuitable for rehire. The evidence fails to show there was a violation of Title VII or

that retaliation occurred.
(EEOC Letter of 1/21/97, attached to Pl.'s Complaint.)

Apparently, the EEOC did not investigate any allegations other than plaintiff's claims of retaliation in his April 1996 charge, nor does the court believe the EEOC reasonably should have investigated such claims.

Therefore, because the court finds that plaintiff's claims of race, age, sex, religion and national origin discrimination were not included in the scope of his April 1996 EEOC charge, the court finds it has no proper jurisdiction pursuant to Title VII over these claims. Therefore, the court GRANTS defendant's motion to dismiss plaintiff's claims of race, age, sex, religion and national origin discrimination for failure to exhaust administrative the remedies.

CONCLUSION

For the above stated reasons, the court GRANTS defendant' s motion pursuant to Fed. R. Civ. P. 12(b) (1) to dismiss plaintiff' s claims of race, age, sex, religion and national origin discrimination for lack of subject matter jurisdiction. Plaintiffs retaliation claim remains before this court for further disposition.

This 8th day of May, 1998.

SEAL & CLERK`S CERTIFICATION STAMP	s/ Delsia Heath Deputy Clerk	s/_____ MALCOLM J. HOWARD United States District Judge

At Greenville, NC
#10

APPENDIX U

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff ORDER

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Dec. 30, 1997)**

THIS CAUSE was heard by the undersigned via a telephonic conference on the Defendant's oral Motion to Compel, brought during the Defendant's deposition of the Plaintiff. Defendant was represented in the conference by Mr. Frank Ward and Plaintiff appeared pro se. Ruling was made Orally in the telephonic conference and this written order is entered to memorialize for the record the ruling made.

Defendant moves to compel Plaintiff to answer questions regarding his present employment. Plaintiff has refused to answer these questions on the expressed fear that his present employer may fire him or take other unfavorable actions against him if it learns of his pending suit against Northern Telecom. Defendant argues that non-privileged information relating to the Plaintiff's present employment is relevant to Plaintiff's claim of damages in this case.

The information Defendant seeks is relevant and therefore discoverable. Plaintiff contends that he has given

counsel all the relevant information about his current employment; however, Defendant is not required to accept Plaintiff's word about these matters and is entitled to verify it from other sources. Plaintiff's present employer may not legally retaliate against him for exercising his right to sue a prior employer for alleged discrimination and the court is unaware of any motivation it would have to do so. Indeed, it would seem that learning of this suit would specifically deter Plaintiff's present employer from taking any improper action against him because this case demonstrates his willingness to sue for a perceived civil wrong.

In summary, as communicated orally today, Defendant's oral Motion to Compel deposition testimony IS ALLOWED.

SO ORDERED, this the 29th day of December, 1997.

S/ _____
ALEXANDER B. DENSON
United States Magistrate Judge

APPENDIX V

May 16, 1996

Ms. Velmer Buxton
Supervisor
Equal Employment Opportunity Commission
5500 Central Avenue
Charlotte, NC 28212

RE: EEO Case #141960312
Saadat A. Siddiqui v. Northern Telecom Inc.

Dear Ms. Buxton:

I am writing in response to the Notice Charge of Discrimination regarding the above referenced charge dated April 8, 1996. Northern Telecom has not retaliated against Mr. Siddiqui in any way as a result of EEOC charges #141950147 or #141960054 or for any other reason alleged by Mr. Siddiqui.

Mr. Siddiqui was employed by BNR at the time of his termination on April 28, 1989. While employed by BNR, Mr. Siddiqui had performance problems as indicated in our initial charge response dated January 3, 1995. His performance rating in 1987 was a "Needs Improvement" and in 1988 an "Achieved Minus", both indicating sub-standard performance. Mr. Siddiqui terminated his employment and was paid severance upon termination.

As indicated in the above-mentioned initial charge response, Mr. Siddiqui gained access to BNR facilities under false pretenses following his termination. Sometime around 1993, Mr. Siddiqui began pursuing employment with BNR again. In an effort to gain entry into the BNR building, Mr. Siddiqui signed in as an employee of Indotronix Contractor Agency when, in fact, he was not employed this contractor. Mr. Sam Dees from Indotronix stated to me that he had asked Mr. Siddiqui to discontinue representing himself as an Indotronix

employee. According to Mr. Dees, Mr. Siddiqui's response was to "cuss him out", call him a number of things, and say to Mr. Dees that he couldn't do anything about it.

Mr. Dees notified the Purchasing Department at BNR that this misrepresentation was occurring at their site. Mr. Roscoe Judd, Purchasing employee, was instructed to find Mr. Siddiqui in the building and ask him to leave. When Mr. Judd found Mr. Siddiqui, he asked Mr. Siddiqui what he was doing in the building. Mr. Siddiqui. Responded that it was none of Mr. Judd's business. Mr. Judd then asked Mr. Siddiqui to leave the building. When this did not occur, Mr. Judd indicated that he would notify security. As Mr. Judd turned around to walk away, Mr. Siddiqui ran form the building.

When determining whether a former employee is qualified for an open position, we consider that individual's prior work performance and history with the company in addition to the individual's education, skills, other work experience, etc. Each time Mr. Siddiqui applies for employment, we consider the aforementioned prior documented performance issues and misrepresentation. These incidents, not his filing of EEOC charges, have adversely affected Mr. Siddiqui's opportunities for rehire with NTI and BNR and will continue to do so in the future.

I trust this information is sufficient to meet the needs of your investigation. Please telephone me at (919) 992-5878 if I can provide further clarification on the Company's position.

Sincerely,
S/_____
Claudia F. Pattison
Senior Manager, Human

July 25, 1996

Mr. Sammie Pittman
EEOC
129 West Trade Street
Charlotte, NC 28202

Dear Mr. Pittman:

This letter is in response to your request for a statement regarding Mr. Saadat Siddiqui.

In Northern Telecom's response to Ms. Velmer Buxton dated May 13, 1996 we explained the circumstances surrounding Mr. Siddiqui's relationship with one contractor, Indotronix. In that instance, the contractor made Northern Telecom aware that Mr. Siddiqui was misrepresenting himself as an employee of that contracting agency. Beyond this discussion with this particular agency, Northern Telecom has not commented in any way to any agency about Mr. Siddiqui's work performance or past employment with Northern Telecom. When the company is contacted regarding verification of employment or past employment, it is our policy and practice to provide the following information only: Name, Full-time or Part-time status, Date of Hire, and Job Title.

I hope this is sufficient to meet your needs in this investigation. If not, please contact me at (919) 992-5878.

Sincerely,
S/_____
Claudia F. Pattison
Sr. Manager, Human Resources

April 23, 1996

Ms. Velmer Buxton
Supervisor
Equal Employment Opportunity Commission
5500 Central Avenue
Charlotte, NC 28212

RE: EEO Case #141960312
Saadat A. Siddiqui v. Northern Telecom Inc.

Dear Ms. Buxton:

I am writing to request an extension of 18 days on our response to the above referenced charge. This will change the deadline for responding to May 10, 1996. Unless I hear from you, I will assume that you will grant this extension.

Please contact me at (919) 992-5878 if you have any questions or concerns.

Sincerely,
S/_____
Claudia F. Pattison
Senior Manager, Human Resources

APPENDIX W

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

No. 5:97-CV-260-H2

SAADAT A. SIDDIQUI

Plaintiff COMPLAINT

v.

NORTHERN TELECOM, INC.,

Defendant. **(Filed Aug. 11, 1997)**

1. Plaintiff resides at: 8135 N. 35th Ave, Apt. 1109
PHOENIX, AZ 85051

2. Defendant(s) name(s): NORTHERN TELECOM INC.

Location of principal office(s) of the named Defendant:

4001 E. Chapel Hill Rd. Nelson Hwy
RESEARCH TRIANGLE PARK, NC. 27009

Nature of defendant(s)' business: Manufacturer and supplier of telecommunication systems.

Approximate number of individuals employed by defendant: Multiple of thousands worldwide.

3. This action is brought pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination.

Jurisdiction is specifically conferred on this court by 42 U.S.C. § 2000e-5. Equitable and other relief are also sought under 42 U.S.C. § 2000e-5(g).

4. The acts complained of in this suit concern:

A) The discrimination and the disparate treatment practiced against me (plaintiff) **continuously** (emphasis added) during and after the employment for a period of 12 years.

B) **Repeatedly** refusing me employment despite the strong recommendation and open expression of intent to hire by many of defendant's managers and staff who interviewed me.

C) **Black listing** me for all kinds of jobs available within the defendant's local and **world wide operation**.

D) Using **previous discriminatory acts** to justify the later and the current acts.

E) **Defaming** me **maliciously** to many other employers who were eager to hire me. Due to this act, one employer withdrew a job offer, others held back from making an offer. All of them black listed me for employment.

F) **Hiring younger** and **less qualified** persons of preferred national origin, religion and culture against the numerous positions I applied for during the last 4 years

G) Advising managers to **avoid** me and not consider me for any job; make excuses and be tactful.

H) **Not allowing** me **to enter** into the building for an **interview** I was **invited** for by the defendant's

manager.

I) **Warning** me of grave consequences if I ever again enter any of the defendant's premises to seek employment.

J) **Harassing, humiliating** and **conspiring** against me.

5. Plaintiff is not presently employed by the defendant. The dates of his employment were 7-30-1984 to 4-28-1989. Employment was terminated because of **lay off** to down size. Plaintiff was convincingly **assured to be rehired** as soon as the first position becomes available.

6. Defendant (s)' conduct is discriminatory with respect to the following:

   (A) my race (B) my age (C) my national origin
   (D) my sex (E) my religion (F) Retaliation due to EEOC Charges filed.

7. The name(s), race, sex and the position or title of individual (s) who allegedly discriminated against me in giving me employment over the past 4 years is (are)

   A) Rosco Judd, black male, employment specialist.
   B) Some managers whose names and identities need to be disclosed as a result of judicial investigation.
   C) Mr. Abdul Khawar, indian, male, vice president.
   D) Mr. Bill Donovan, white, male, vice president.
   E) Some people in human resource, purchasing, security, and facility departments.
   F) Some technical managers and staff whose names can only be known through a judicial process.

8. The latest act of alleged discrimination occurred on or about mid 1995 (as contained in the EEOC charge 141960312).

9. The nature of my complaint, i. e. the manner in which individuals named above and those not named discriminated against me in refusing me employment and making other employers do the same is as follows:

   A) A consulting company named Data Skill had hired me to work for it's clients, particularly the defendant. This company was told that I am "NOT ELIGIBLE" for rehire. As a result, Data Skill withdrew the offer and never contacted me again for any job.

   B) Many other companies (IIC, CDI, AEROTECH and others) were also told that "NOT ELIGIBLE FOR REHIRE" and much more.

   C) Negative references were given to many other employers like ALCATEL TECKLEC and others.

   D) Ethnic references were made by Mr. Khawar to avoid considering me for employment.

   E) Mr. Donovan ridiculed and trivialized my testimonial of accomplishments at other employer. His friendly advice to me was to stop looking for employment with them.

   F) Rosco Judd and IIC conspired to deny me lawful access to the defendant's premises for job or any other reason.

   G) Human resources information center told me that I am eligible for rehire but told other employees otherwise.

   H) Defendant showed arrogance and total disregard to fair employment policies and professional ethics.

I) In essence, defendant destroyed my professional career and dignity; made living very very miserable.

10. During employment period, defendant discriminated against me in manners described below:

A) Comparing me with Ayatullah Khomeni of Iran and other terrorists.
B) Unfair work assignments.
C) Unfair evaluation.
D) Systematic and planned lay off.
E) Giving me false assurance of rehiring.
F) Not consider me for promotions and no concern with my professional growth.

11. The alleged illegal activities took place at the defendant's place of business in RTP, North Carolina.

12. I filed charges with EEOC regarding defendant's alleged discriminatory conduct. The latest charge was filed in 1995 and its number is 141960312. i have attached a copy of the Notice_of_right_to_Sue letter issued by the Equal Employment Opportunity Commission. This letter was received by me on Jan 25, 1997.

13. I seek the following relief:
(A) Recovery of back pay; (B) reinstatement to my job;
(C) Trial by jury on all issues so triable.

and any other relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.

Date 8-11-97 s/ (Saadat A. Siddiqui)
Plaintiff

Phone: _(602) 589-5741
8135 N. 35th Ave, Apt. 1109
PHOENIX, AZ 85051

APPENDIX X

RALEIGH AREA OFFICE
Telephone Inquiry

To: KAR ___ TIME: 14:37:26

Name: SAADAT SIDDIQUI Phone: (919)469-5685

Message:

Respondent: Northern Telecom	No. Employees: 15
R. Location: RTP	Date of incident: 01/05/96
Status(s): ADEA	Filed Elsewhere?

RESUME OF INQUIRY:

PCP believes he was denied hire because of his **age** and possible **retaliation** for having filed several charges against Northern Telecom.

COUNSELLING PROVIDED:

Counseled on EEOC Laws and SOL.

Completed By: KAR Minute Used: Appointment? Y
Date Completed: 02/23/96 Time completed: 10:11:37
Reviewed By:_____

APPENDIX Y

Saadat Siddiqui
306 Trappers Run Dr.
CARY NC 27513
Ph: (919)469-5685

Mrs. Tamy Alford
Recruiting Specialist
IIC, 1135 Kildaire Farm Rd, CARY, NC

Dear Mrs. Alford,

I want to thank all of you at IIC for presenting my resume to BNR as your bid to hire me for their work. I'm sorry to know that some negative remarks about me made by the person to whom presentation was made caused you embarrassment.

According to you this BNR person did not like my performance there and made the following disgusting remark. "I would have saved you from this presentation if I knew whom you are going to present."

Since you cant' tell me who this individual is, I can't do anything to correct this problem. When BNR laid me off, I was told that I have been a very valuable employee and will always be welcome when there is an opening and I want to come back. I don't know what did go wrong after I left BNR.

I'd like to believe that I am not being discriminated in subtle ways that everyone recognizes but our moral and legal system fails to deal with them.

You as well as BNR knows that my credentials exceed their requirements and I've an excellent track record. In support of this statement and other facts I'm attaching to herewith copies of letters from my last employer "AGS" and the

client, IBM.

You may forward the attached letters to your BNR contact who made the above nasty comments and did a great injustice to you, me and the company itself. If he still thinks bad about me then it is certainly a case of misuse of authority and discriminatory practice against an individual who has no recourse but suffer quietly.

I certainly would like to know all the facts if you can provide them without any adverse effect on your business.

Finally, I thank you all again for trying to place me to work.

S/ _____

Dated: 6-27-94

Saadat Siddiqui

APPENDIX Z

VISITOR LOG for TUESDAY, AUGUST 9, 1994

Register **TUESDAY** **VISITOR** **AUG 9, 94** **BNR (logo)**

Print Name	Name of Company	Visiting-Name	Time In	Time Out
1. Robin Whaley	The Kelton Group	Joy Patterson/Training	8:10	12:10
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13. Tim Wesley	Motorola	Murry Gavin	1:05	1:35
14. Ian Hewitt	Motorola	Murry Gavin	1:05	1:35
15. Saadat Siddiqui	Interview	Cathleen Cassidy	2:00	3:10
16. Jeff Johnson	IIC	M. Nowlin	2:00	3:30
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---	---	---	---	---
21. Rodney Green	Self	Carla Green	4:40	---

August 9, 94 Signature of security guard s/ D.C. (ineligible script) Post on VE